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## CONVEYANCER'S NOTEBOOK

*Baptist and Congregational Trusts Acts, 1951.*—A few years ago the Baptist and Congregational Churches prepared model trusts known as the Baptist Model Trusts for Chapels and Halls, the Baptist Model Trusts for Manses, the Congregational Model Trusts (General) and the Congregational Model Manse Trusts. This Act, which is a private Act, enables the trustees of Baptist or Congregational Church lands, at the request of the recognised denominational society entitled to occupy, enjoy or have the benefit of such lands, to adopt one of the model trusts in lieu of the existing trusts governing the same (section 4). Power is given to amend the model trusts after 1952 and at subsequent intervals of not less than ten years. The proposed amendment must be first approved by a three-quarters majority of the council of the Church concerned and subsequently by a two-thirds majority of the annual assembly of the Church (section 5). There is a saving for doctrinal standards, the qualifications of ministers and office-bearers and the identity of ultimate beneficiaries (section 6). Notwithstanding anything contained in any trust deed relating to such church lands, any of the Baptist or Congregational trust corporations named in the Schedule to the Act may be appointed a trustee thereof and may act as sole trustees (section 3). Those concerned with acquisition or holding of such church property will be advised to get in touch with the Baptist or Congregational Union in case of doubt as to the appropriate trust corporation to be appointed.

*The Public Element in Religious Trusts.*—A correspondent has raised a question on the article entitled "The Public Element in Charitable Trusts" which appeared in the last issue of *The Conveyancer*. It was pointed out (at pp. 341, 342) that, although a gift to a priory consisting of a community of cloistered nuns was, on the authority of *Gilmour* v. *Coats*, [1949] A. C. 426, not charitable, a gift to the prioress of the priory on trust to apply it for the promotion of the Roman Catholic faith satisfied the test of public benefit, and it was conjectured that the prioress, having thus been appointed the trustee of a valid charitable trust, would then be able to apply the gift solely for the purposes of the priory. This proposition draws support from a *dictum* in *Re Mariette, Mariette* v. *Governing Body of Aldenham School*, [1915] 2 Ch. 284, where Eve, J., said (at p. 289) that if the fund in question ". . . had been left to the charity [Aldenham School], for the general purposes of the charity, it might have been applied to any of the purposes to which moneys coming to the hands of the governing body are in fact applied . . .". The promotion of the Roman Catholic faith being charitable, it seems that the Roman Catholic Church, which seeks to promote that faith, is in much the same position as the governors of a school which is a charitable foundation; then, if the maintenance of cloistered communities is one of the ways in which the funds of the Roman Catholic Church are ordinarily applied, it would appear that charitable funds could rightly be used for this purpose.

But, although this may be a logical argument, the law relating to charities is not (as the article in question made clear) logical, and the practical difficulty of *Gilmour* v. *Coats* remains. If a gift were made to the prioress in the way suggested, it would not, like the gift in *Gilmour* v. *Coats*, fail to take effect at all, but the application of the fund for the purposes of the priory might, in view of *Gilmour* v. *Coats*, be challenged as being in breach of trust, and, if it were, the Court would have to decide the matter on the evidence before it and in the light of the authorities. The question might well arise over a claim to repayment of income tax, and it would certainly not be wise to assume, before such a case had been before the Court, that such a claim would succeed.

Provided that the funds were not already subject to a trust (in which case variation of the trust by the trustees would not be permissible), there would, of course, be nothing to prevent a contemplative order making a declaration of trust to the effect that all its funds were held for the promotion of the Roman Catholic faith, and the funds would then be held for a good charitable purpose. But if the funds were thereafter applied for the purposes

of the contemplative order the same difficulties might arise as are adverted to above.

S. G. M.

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*Extension of Compulsory Registration to Surrey.*—Solicitors in general still continue their opposition to registration of title. If, today, they do not carry their action so far as only to apply for possessory titles, they still take every opportunity to delay the extension of compulsory registration. At the recent public inquiry before Mr. J. Neville Gray, K.C., all three Surrey Law Societies opposed extension to Surrey, the South East and West Surrey Law Societies making a frontal attack on registration of title generally, the Mid-Surrey Law Society contenting itself with opposition to extension of the compulsory areas at the present time and particularly extension to Surrey. It will probably surprise few that Mr. Neville Gray has reported in favour of extension to Surrey forthwith.

Solicitors' real objection to registration of title is that, although the work involved in registered conveyancing is rather less than in unregistered, the difference does not involve the gross disparity in the scales of remuneration. Their case on this point is so strong that it is nothing less than injustice that the registered land scales are not increased. We find some difficulty in following Mr. Neville Gray's observations on expense. He says that as a result of the simplification of unregistered title since 1925 the difficulty *and expense* (our italics) of transferring unregistered land has been substantially reduced. In an ordinary sale since 1925 a scale fee is payable and apart from the various percentage increases to the original scale there would not appear to be any change in expense. Again, he says that a "dealing with registered leaseholds is not as a rule cheaper than with unregistered". If he is confining himself to the grant of a new lease or underlease, the expense to the lessee in the case of registered land is greater; but, if he is referring to sales, both the vendor's and purchaser's legal costs are materially less. Finally, he recognises that today, particularly as a result of planning legislation, there is an increase in the work to be done, but is it true that this increase has resulted in an increase in expense? Do solicitors charge, and are they entitled to charge, a fee for this work over and above the scale fee? We think they are entitled to charge for it, as it is not part of deducing or investigating title, but, so far as we know, it is not common to do so.

The inquiry served one very useful purpose: it enabled reasoned criticism of land registration practice to be put forward and the Chief Land Registrar intimated that a committee will be set up to consider the difficulties. Some of these difficulties could be overcome by alteration to the rules, but others would require legislation. Whatever may be the defects of the Land Charges Act. it is far simpler to register a land charge in the case of unregistered land than in the case of registered, for the person seeking to register in the former case does not need the assistance of the estate owner as in the latter; and the type of estate contract considered in *Turley* v. *Mackay*, [1944] Ch. 37, would not appear to be registrable at all in the case of registered land. At the inquiry the Law Societies appear to have made loopholes in the state guarantee their chief objection to land registry practice, but the state guarantee is far less in question than third party rights which, at present, are inadequately protected.

# TENANTS IN POSSESSION AND THIRD PARTIES

By G. Boughen Graham, Barrister-at-Law

Before the real property legislation of 1925 came into force it was an elementary principle that a purchaser of land or of any interest in land took subject to the rights of third persons of which he had actual or constructive notice and there was a great body of cases which established in what circumstances a purchaser could be said to have constructive notice of another's rights. One line of cases culminating in *Hunt* v. *Luck*, [1902] 1 Ch. 428, established beyond doubt that the fact of a tenant being in possession of any part of the land concerned affected a purchaser with constructive notice of that tenant's rights. *Hunt* v. *Luck* (*supra*) did not of itself decide whether such notice was confined to the tenant's rights *qua* tenant or whether it extended to collateral rights such as those which a tenant may enjoy under an option to purchase contained in his agreement of tenancy—see as to the nature of such rights *Sherwood* v. *Tucker*, [1924] 2 Ch. 440. The early case of *Daniels* v. *Davison* (1809), 16 Ves. 249, seems, however, to indicate that the constructive notice did extend to the whole of the tenant's rights although, it is supposed, it would not extend to rights which were not disclosed upon the purchaser making a sufficient inquiry.

It is well known that the general policy of the 1925 legislation was to abolish the doctrine of notice and to replace it by the principle of registration. Despite this general policy it has remained in some doubt whether the principle of *Hunt* v. *Luck* (*supra*) is entirely abrogated under the new system or whether it is, to some extent, still good law today. After lying dormant for some time the matter has been brought very much to the fore by three recently reported cases, namely, *Coventry Permanent Economic Building Society* v. *Jones and Others*, [1951] 1 All E. R. 901; *Woolwich Equitable Building Society* v. *Marshall and Another*, [1951] 2 All E. R. 769; and *Universal Permanent Building Society* v. *Cooke and Others*, [1951] 2 All E. R. 893.

The main purpose of this article is to examine how far *Hunt* v. *Luck* (*supra*) has survived 1925, but in the course of this enquiry certain comments will be made upon other aspects of the matter. It is proposed, first, to examine the three above-quoted cases which will for convenience be referred to as *The Coventry Case*,

*The Woolwich Case*, and *The Universal Case* respectively; secondly, to examine three other recent cases which have a bearing upon the question; finally to put forward certain considerations which do not appear to have been fully considered in any of the six cases. Before proceeding it may be convenient to recall at this stage that there has been controversy whether or not the effect of registration of land under the Land Registration Act, 1925, is merely to provide alternative "machinery" so that the rights of persons concerned over the land remain unaltered or whether, as was suggested by the late Dr. Potter, the rights of parties in registered land are *sui generis* and do not necessarily correspond with those over unregistered land. Since *The Woolwich Case* differs from its companions in being concerned with registered land this aspect of the matter will have to be borne in mind.

### THE COVENTRY CASE

The facts in this case were as follows:—P purchased a house at auction on February 15, and on the following day, the 16th, agreed in writing with T to grant to T a weekly tenancy of the ground floor thereof. Subsequently P arranged to obtain a mortgage from the plaintiff society and stated in her application therefor that she would have vacant possession of the ground floor. T went into possession of the ground floor on March 16 and on March 18 the purchase was completed and the property mortgaged to the plaintiff society; the mortgagor's statutory powers of leasing were excluded. In the course of time the plaintiff society sought possession of the premises and the tenant claimed to have a tenancy which was both binding upon the society and protected by the Rent Restriction Acts. Two quite distinct arguments were advanced on behalf of the tenant and they may be distinguished as the estoppel argument and the *Hunt* v. *Luck* argument.

*The Estoppel Argument.*

This was to the effect that it must be postulated that there was a *scintilla temporis* between the completion of the purchase and of the mortgage during which time P had the unencumbered legal estate: that P's acquisition of the legal estate fed the estoppel as between P and T so that, when the mortgage was completed, T had a legal as distinct from an equitable tenancy, which tenancy was binding upon the plaintiff society as mortgagee. It was rejected by Harman, J., who said (at p. 903):

> "The question is whether I must assume the *scintilla temporis*. . . . I do not see why I should postulate this. The

whole transaction was one transaction. The vendor would not sell without receiving his purchase money and the mortgagee would not provide the purchase money without receiving the term of years. The money in fact went straight—as is the universal practice—from the mortgagee to the vendor, and not until it was in the vendor's hands would a legal estate be created either in favour of the landlord or of the mortgagee. It seems clear to me that the whole thing is one transaction in substance and I am not constrained to introduce an artificiality. . . . I reject the argument that the doctrine of estoppel must have created in the tenant an estate in priority to that of the building society ".

Whether or not this finding is a correct one there can be no doubt that it is a novel one. The idea that a conveyance to a purchaser and a mortgage by that purchaser are in substance one and the same transaction is one that does not seem to have been canvassed previously. The application of the Land Charges Act, 1925, to this common type of transaction has given rise to difficulties in the past and it is well known that the principal object of the Law of Property (Amendment) Act, 1926, s. 4 (1), was to make it possible to fix mortgagees with notice of restrictive covenants imposed by a conveyance which was executed immediately prior to the mortgage. It appears that in circumstances only slightly different from those in the present case that section might have a curious effect which may be examined.

It provides that if a priority notice be given, then, in proper cases, the time of registration shall be deemed to be the time at which the instrument was created : secondly, that where any two instruments are contemporaneous and one is dependent upon the other which is protected by such a notice then the dependent instrument, etc., shall be " deemed to have been created, entered into or made or to have arisen after the registration of the other ", that is to say, if the two parts are read together, after the creation of the other.

Suppose the facts of the present case with the addition only that the conveyance to P contains restrictive covenants duly protected by a priority notice. If that is so then section 4 (1) of the 1926 Act would operate and the mortgage would have been deemed to have been created after the creation of the conveyance. Furthermore such " deeming " is quite general and not expressed to be for the purposes only of the section. Hence, in these circumstances, no matter what view the Court took of the substance of the transaction it would be constrained, by statute, to regard the mortgage as created after the conveyance. One is left wondering why the

rights of the tenant should be affected by the quite irrelevant factor whether or not a priority notice has been given in respect of some quite different matter and also wondering, with respect, whether it is in fact proper to regard a conveyance and a mortgage as "one transaction in substance" in any circumstances.

*The Hunt* v. *Luck Argument.*

This was that, since T went into possession two days before completion and was in possession at the date of completion, the plaintiff society had notice of his rights by virtue of that possession. The learned Judge examined the nature of the tenant's rights and came to the conclusion that they were equitable rights depending upon the agreement of February 16, which agreement, he held, was capable of registration under the Land Charges Act, 1925. The Court next considered section 13 (2) of that Act which provides :—

> "A land charge of . . . Class C . . . created or arising after the commencement of this Act, shall (except as hereinafter provided) be void as against a purchaser of the land charged therewith, . . . unless the land charge is registered in the appropriate register before the completion of the purchase"

and also the Law of Property Act, 1925, s. 199 (1), which provides :—

> "A purchaser shall not be prejudicially affected by notice of— (i) any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, . . . which is void or not enforceable as against him under that Act . . . by reason of the non-registration thereof."

and decided that the tenant's title should have been registered and as it was not so registered the plaintiff society, even if it had notice of it, was not to be prejudicially affected by it. Hence it was void as against the society who was entitled to an order for possession.

At this stage one might be disposed to wonder how and against whom the title should have been registered in view of the fact that the person agreeing to grant the tenancy had no legal estate in the land against which the agreement might have been registered. If reference is made to the Land Charges Act, 1925, s. 10 (1), Class C (IV), it will be found that a registrable estate contract includes:

"A contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him", this undoubtedly establishes that the agreement is registrable : it does not, however, establish against whom it is to be registered. This

part of the question depends upon section 10 (2) of the same Act and its consideration will be deferred until *Sharp* v. *Coates*, [1949] 1 K. B. 285, is considered.

### The Woolwich Case

The facts in this case were almost identical with those in *The Coventry Case* except that the agreement for a tenancy was oral and except that the land was registered under the Land Registration Act, 1925. So far as chronology is relevant the tenant moved in on September 11 although his tenancy was to commence from the date fixed for completion which was September 13. The form of transfer and the form of legal charge in favour of the plaintiff society were duly completed on that date but were not registered until September 28. Similar arguments were advanced on behalf of the tenant as in the earlier case but whilst there the decision went against him on both points here he succeeded on both.

*The Estoppel Argument.*

One distinction of fact between this and *The Coventry Case* was that in this case the legal charge contained a recital that the mortgagor was estate owner in respect of the property and Danckwerts, J., said that he thought it was clear from the judgment of Harman, J., in *The Coventry Case* that if there had been any appreciable interval he would have held that an estate had been completed by estoppel; he was unable to find from the report of the earlier case whether there had been any recital similar to that mentioned above and (at p. 774) he expressed the view that:

> ". . . a mortgagee who has inserted in the deed under which he acquired title a statement that the mortgagor is the estate owner in respect of the property which is being mortgaged or charged to the mortgagee cannot complain if that statement is taken to be true. It seems to me that the irresistible inference is that I must presume that the transfer must have been executed at a time earlier than the charge to the building society so that there was a time at which it would be correct to say that the mortgagor had become the estate owner . . . it seems to me to follow that . . . the tenancy was confirmed by estoppel".

One striking fact about this branch of the decision is that the two cases were distinguished on this point by the presence or absence of a common form recital and it may be a matter of mild surprise that that fact should have made so great a difference.

If attention is thereby drawn to the sound and salutary rule that recitals should always be omitted unless they are absolutely necessary then that alone will ensure that the cases have not been reported in vain. For our purposes, however, the more important aspect of this matter is that a case may well occur which is concerned with registered land but which is not distinguishable from *The Coventry Case* by the presence of a recital of estate ownership. If such a case does occur is it possible that *The Coventry Case* can be followed in the realm of registered land?

It does not appear from the report of the case that the provisions of the Land Registration Rules, 1925, r. 84, were ever referred to: that rule provides that:—

> "Where two or more instruments relating to the same land, or to the same charge are delivered at the same time by the same person they shall rank for the purpose of priority, in such order as may be directed by or inferred from, the instruments or applications, and, in default, as may be required in writing by the persons delivering them".

Now where, as in *The Woolwich Case*, the legal charge contains a recital of estate ownership that recital, when the instruments were delivered for registration, would indicate to the Registrar, in the same way that it formed the basis of the Court's decision, that the conveyance must rank first. Such is the inference to be drawn from the instruments and if the Registrar drew a mistaken inference from them the Court, when it declared the proper conclusion, could order rectification of the Register; see Land Registration Act, 1925, s. 82 (1) (*h*). Where, however, there is no such recital and the transfer and charges are presented together by the same person in what order are they to rank?

The Registrar considers the documents to see if any order is to be inferred from them. Prior to *The Coventry Case* he might well have reasoned that since a mortgagee must have the legal estate before he mortgages it, it is reasonable to infer from the nature of the documents that the conveyance preceded the mortgage. Since that case, however, he cannot safely come to that conclusion: there is nothing on the face of the documents to show whether there was or was not a *scintilla temporis*. The transaction may have been precisely as in *The Coventry Case* or the purchase may have been completed with the purchaser's own money and mortgaged later in the day as a separate transaction. There is nothing in the documents from which the Registrar may infer one or the other and in default of such inference Rule 84 does not direct him to inquire into the facts but directs him to ask the person tendering the documents in which order he wishes them to rank.

Furthermore it seems that if that wish has been made known it is of no avail for a Court at a later date to examine the facts behind the instruments because no mistake has been made which would enable the Register to be rectified.

It is submitted therefore that so long as the first branch of the decision in *The Coventry Case* remains good law then where the facts recur in the case of registered land the wish of the person delivering the documents is paramount. This, however, assumes that in practice it is possible to record two documents ranking, as it were, *pari passu*. The Rules do not at first sight appear to envisage such a state of affairs although it is thought that the words of Rule 84 could be construed to allow of it. A series of things is no less ranked in order because two of them rank *pari passu*. But one is again driven to wonder whether it is sound to regard the transactions as in substance one.

*The Section 70 Argument.*

This is in effect the *Hunt* v. *Luck* argument of *The Coventry Case* applied to registered land and it is based upon the Land Registration Act, 1925, s. 70 (1) (*g*), which provides that :—

> " The rights of every person in actual occupation of land or in receipt of the rents and profits thereof, save where inquiry is made of such person and the rights are not disclosed "

shall be an overriding interest and that all registered land shall be deemed to be subject to any such interest which may from time to time be subsisting.

Danckwerts, J., held (at p. 773) that :—

> " . . . so far as T's tenancy is concerned . . . it is binding upon the mortgagee as an overriding interest under the Land Registration Act, 1925, s. 70 (1) (*g*), because it is quite plain that from the beginning of the day September 13, and *a fortiori* on September 28 T was in possession. . . . Therefore by reason of this occupancy he was the owner of an overriding interest in a manner similar to the old rule that the fact that persons are in possession puts the purchaser on inquiry, and the rights of the building society are subject to his overriding interest and to the rights (whatever they may be) that he has ".

The only comment that need be made upon that is that one could hardly ask for a more categorical decision that the principles of *Hunt* v. *Luck* still apply in their full force to registered land by reason of the express words of the above-quoted section. Hence it follows that if it be found that those principles do not apply either of themselves or under some other guise in the case of registered

land then there is a perfect example of the different rights which obtain over the two types of land.

### The Universal Case

Here again the facts were much the same as in *The Coventry Case*. The land was unregistered and the sequence of events the same : two differences, however, did exist. The agreement for the tenancy was oral and the mortgage was dated one day after the conveyance. The report does not state whether the mortgage contained any recital of title.

*The Estoppel Argument.*

Romer, J. (as he then was) had held at first instance that the conveyance and mortgage were in substance one transaction and that

> " It would be introducing too much refinement to say that a gap of twenty-four hours distinguished the case before me from that decided by Harman, J."

It may be observed that that decision was not reported and was not quoted to Danckwerts, J., in *The Woolwich Case*.

The Court of Appeal examined the evidence which had been presented and found that there was no evidence whether or not the two documents did in fact form parts of a single transaction. In the absence of such evidence the Court fell back upon the rule that deeds take effect from the time of their delivery and that *prima facie* the time of delivery is the date on the deed. That being the case there was not only a *scintilla temporis* but a lapse of some twenty-four hours during which time the tenant's equitable interest was perfected by estoppel.

Before leaving this part of the decision it may be noted that Sir R. Evershed, M.R., said (at p. 897) :

> " It may well be that in other cases it could be shown that, notwithstanding the divergencies in date, there was really but one transaction, and, if that is so, then the question would arise whether the decision of Harman, J., in *The Coventry Case* should be followed. It is a decision which obviously has an appeal to common sense . . . but I express neither affirmation of it nor the contrary ".

It would seem, therefore, that it is impossible to know whether the conveyance and the mortgage are or are not parts of one and the same transaction without an exhaustive analysis of the facts. There can be no doubt that, even if they bear the same date, they may in fact be quite separate transactions : now it appears that

even if they bear different dates they may yet be one and the same. Danckwerts, J.'s judgment in *The Woolwich Case* was not before the Court of Appeal and we do not know its views upon his method of distinguishing *The Coventry Case*, nor, as has been stated, do we know whether there was such a recital in the present case. However, the presence or absence of such a recital may be one of the facts to be considered when embarking on the sort of investigation which Evershed, M.R., envisages.

*The Hunt* v. *Luck Argument.*

Romer, J., whilst deciding against the tenant's interest upon the estoppel ground had decided that, on the facts of the case, the tenant's title was not one which was registrable. Unfortunately it is not clear upon what grounds he reached that decision. Jenkins, L.J., thought that that part of the judgment was perhaps based upon a misunderstanding or an inadvertent admission. In order to remove doubt he wished to make it clear that the Land Charges Act, 1925, s. 10 (3), provided for the registration of a land charge which was not created by any instrument in writing: it could not be said that an oral agreement for a tenancy was not registrable.

It is a matter for regret that, since the Court of Appeal had decided the case upon the estoppel ground, they did not find it necessary to express any opinion upon this matter.

### Wright *v.* Dean

This case ([1948] Ch. 686) is not of very direct interest to the present inquiry but is nevertheless worth recalling. The defendant had demised to the plaintiff certain premises by a lease which gave to the plaintiff an option to purchase. The option was never registered under the Land Charges Act, 1925, and in course of time the defendant sold the reversion to a third party no mention being made in the contract or conveyance of the lease or of the option although the purchaser was well aware of the existence of both. The plaintiff, after the sale of the reversion, called upon the defendant to convey the premises to him and finding that the latter had put it out of his power to implement his contract sued him for damages for its breach. It was never suggested that the option, unregistered as it was, was binding upon the purchaser although, of course, it would have been so binding if *Hunt* v. *Luck* had applied; it was suggested that the damages recoverable must be nominal because, it was urged, on the true construction of the lease and option, there was an implied term that it would be

registered by the plaintiff. Of course, whether or not such a term exists is a matter of construction in each case but *Wright* v. *Dean* shows that there is not, in general, any obligation upon either party to register such a contract.

It also shows that any person granting an option or an equitable tenancy has an interest to register it himself if it be true that *Hunt* v. *Luck* is no more. Apart from the practical value of this lesson it is an indication that the subject-matter of this article is of interest to landlords as well as to tenants.

### Sharp *v.* Coates

This case ([1949] 1 K. B. 285) is interesting in that it might give, but does not give, the answer to the question which was left open when discussing *The Coventry Case*—against whom is the tenant to register? It is also interesting to the conveyancer in that it was decided at first instance by Humphreys, J., and his judgment was upheld by a completely common law Court of Appeal. It is not to be discussed here whether its authority is thereby enhanced or diminished. The facts were that a tenant from year to year had sublet upon similar terms and had agreed that if and when he obtained the freehold he would grant to his sub-tenant a term of years. He did in fact obtain the fee-simple and forthwith sold it. The case turned upon whether the agreement to grant a term of years was or was not registrable under the Land Charges Act, 1925, notwithstanding that, at the date of the agreement, the lessor did not have, nor could he call for, the estate out of which the term was to be granted.

It was decided that upon a true construction of the Land Charges Act, 1925, s. 10 (1), Class C (IV), the agreement was registrable and, since it was not registered, it was void as against a purchaser by reason of section 13 (2) of the same Act. The question whether or not the sub-tenant had any rights springing from his occupation of the premises was never raised. Having decided that the agreement was capable of registration the question arose—against whom was it to be registered? This must be determined from section 10 (2) of the Act which provides that it shall be registered

> "in the name of the estate owner whose estate is intended to be affected"

and by section 20 (4) it is in effect provided that an estate owner is the owner of a legal estate. In *Sharp* v. *Coates* the person who had agreed to grant the term of years had himself a term of years, which is a legal estate, and which might be affected by the agreement (as was demonstrated by counsel for the defendant at

pp. 290–1). It was held that the agreement should have been registered against the legal estate of the tenant. One may reflect that the legal estate (fee-simple) held by the head-lessor would also be affected when effect was given to the agreement although, of course, by then it would no longer be his.

In *The Coventry Case*, however, the person who had agreed to grant the tenancy had not even the most transient legal estate against which to register. The undoubted difficulties which arise in determining where to register spring entirely from the unsatisfactory wording of the Land Charges Act, 1925, s. 10 (2). The fact is that the estate which is to be affected will not be in the ownership of its present estate owner when it is affected. It might answer if the section were construed as reading "the present owner of the legal estate which is to be affected" but that seems to indicate that where there are two legal estates as in *Sharp* v. *Coates* the charge ought to be registered twice.

A brief reference to the problem is found in *The Law Society's Gazette*, Vol. 47, p. 187, and there the conclusion is reached that on a sub-sale the estate contract should be registered against the original vendor and such is stated to be the practice of the registry. It is also stated that the Registrar would not refuse to register against the name of the sub-vendor although such registration would appear to be ineffective. There seems no doubt that in *The Coventry Case* registration should have been against the original vendor : the only reason that can be advanced with confidence is the inartistic one that the Land Charges Act, 1925, s. 10 (1), Class C (IV), provides that the agreement is registrable and section 10 (2) that it is to be registered against the owner of a legal estate of some sort. Since the vendor is the only person with a legal estate of any sort he must be the man !

The obvious practical difficulty to this is that the equitable tenant does not know from whom and when his landlord purchased the property and does not seem to have any means of compelling disclosure. Admittedly the landlord ought in his own interests to see that someone registers in the proper place (*vide Wright* v. *Dean*) but if he refuses the tenant information and neglects his own interests the tenant is left with no means whatever of protecting his interest except by an action in contract against his landlord wherein damages are the only available remedy. But this is not all. A tenant may hold under a lease including an option to purchase. When he takes his lease, he is precluded by the Law of Property Act, 1925, s. 44 (2), from demanding proof of his landlord's title. He assumes that it is in order (as he must) and registers against the landlord. When he has to rely upon his

registration he finds that the legal estate has been outstanding somewhere and that he has registered against the wrong person.

### Hollington Bros., Ltd. *v.* Rhodes and Others

The interest in this case ([1951] 2 All E. R. 578) lies in the fact that here, unlike any other case that has been considered, the purchasers took expressly subject to the tenant's rights. The facts were that the plaintiff company was in occupation of certain rooms in a block of offices in circumstances in which it might have been said that it was holding under an agreement for a lease. The defendants sold their head-term to a third party expressly subject to and with the benefit of certain lease and tenancy agreements scheduled to the contract of sale. In this schedule the plaintiff company was shown as having an underlease of the premises for seven years at a stated rent. Harman, J., found as a fact that, upon the evidence before him, there had never been a binding agreement for a lease and hence the plaintiffs' claim in contract failed *in limine*. Nevertheless he expressed certain *obiter dicta* as to what would have been the position had such an agreement been proved.

His Lordship's first view of the matter was very similar to that which he expressed in *The Coventry Case*: the agreement was "a charge or agreement affecting land" and hence registrable, therefore the Land Charges Act, 1925, s. 13 (2), and the Law of Property Act, 1925, s. 199 (1) (i), applied and the agreement was void against the purchaser of the head-term. He quoted *Wright* v. *Dean* (*supra*) as authority for the fact that there was no obligation upon the plaintiff company to register and went on to consider the submission based upon the fact that the third party's interest in the land was expressly subject to the leases and agreement scheduled to the contract of sale. On this the learned Judge said (at p. 579) :—

> "The defendants' answer to this point was that (the third party) did not contract to obtain and did not by the assignment get, any interest in the land expressed to override the plaintiffs' rights and that, consequently, they took subject to those rights, which are expressly mentioned, and that the land which they purchased was, in fact, only an interest in the land subject to the rights of the plaintiffs in it. This argument seemed to me to be attractive because it appears at first glance wrong that a purchaser, who knows perfectly well of rights and is expressed to take subject subject to them, should be able to ignore them".

Nevertheless he could not see how in view of the Land Charges Act, 1925, s. 13 (2), and the Law of Property Act, 1925, s. 199 (1), he could hold that that which was to be void and which was not to prejudice a purchaser could be validated by an equitable doctrine.

The argument summarised in the above-quoted extract from the judgment is, of course, a most interesting one and one to which the learned Judge would doubtless have devoted more space in his judgment had he not already decided the case upon other grounds. In the opinion of the writer it meets with some difficulty which will be discussed below but it may perhaps be mentioned here that it derives some support from a case which was not quoted to the Court.

In the course of his judgment Harman, J., expressed a view that it was the policy of the framers of the 1925 legislation to get rid of equitable rights in the land unless registered and referred by way of comparison to *Re Monolithic Building Co.*, [1915] 1 Ch. 643, and to certain remarks of Cozens Hardy, M.R., at p. 665. That case was decided upon the Companies Act, 1908, s. 93, which, very briefly, provided that any charge which was not registered within a specified time should be void (as a charge) against any creditor of the company. A charge had been created and was not registered and subsequently another charge was created in favour of a creditor who had the most explicit notice of the existence and terms of the earlier charge but the later charge was not expressed to be a second charge. It was held that the later charge took precedence.

With this case may be contrasted the decision of the Privy Council (Lord Atkin, Sir John Wallis and Sir L. Sanderson) in *Ram Narain* v. *Radha Kishen Moti Lal Chamaria Firm*, L. R. 8 Ind. App. 76. This was an involved matter which was decided upon the Indian Companies Act, 1913, section 109 of which is in similar terms to the Companies Act, 1908, s. 93. The facts were similar to those in *Re Monolithic Building Co.* (*supra*) except that the later charge was expressly stated to be a second charge. In the event the case was decided upon the effect of an order of the Court extending the time allowed for registration but in dealing with the *Monolithic Case* it is said (at p. 84) :—

> "The facts of the present case are materially different from the facts of the cited case, especially by reason of the fact that the plaintiffs' mortgage contains an express term that it is a second charge . . . ".

Which, if it does no more, indicates that their Lordships were sympathetic to the argument in question.

### Other Matters for Consideration

It will have already become apparent that the writer, with great respect for Harman, J., is disposed to look with some doubt upon the first branch of the decision in *The Coventry Case* that a conveyance to and mortgage by a purchaser are in substance one transaction. It will also be apparent that, without any disrespect at all for the legislature, he has no enthusiasm for a system of registration whereby an equitable tenant or an option-holder is compelled to register to protect his interest but is denied the right to demand the name of the person against whom he must so register. It is not now proposed, however, to pursue these matters further but to concentrate upon whether or not the tenant in occupation has any rights which are not dependent upon registration.

There can be no doubt that if, when the freehold is conveyed or the head-term assigned, the position is that the vendor has granted a lease to the tenant but the tenant has not gone into possession then, if the agreement is not registered, the tenant can have no rights against the purchaser. But suppose that the tenant has gone into possession and is in fact in possession, can this fact, as distinct from the existence of the agreement confer upon him any rights against the purchaser? This is the question which does not seem to have been fairly answered in any of the reported decisions.

*Law of Property Act, 1925, s. 199 (1).*

If the Law of Property Act, 1925, s. 199 (1), be examined it will be found that paragraph (i) deals with

> " any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925 ".

Now the fact of possession is not an instrument nor, it is submitted, is it a matter capable of registration. The matters capable of registration are set out in the Land Charges Act, 1925, s. 10, and the fact of possession or of occupation of premises is not there mentioned nor can the language be strained to include it. The fact of possession cannot be brought within paragraph (i), it falls, however, precisely within paragraph (ii) which deals with

> " any other instrument or matter or fact or thing ".

Now paragraph (ii) in effect provides that a purchaser shall not be prejudicially affected by notice of any such instrument, etc., unless

> " it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him ".

The matter may be put this way. Equity laid a heavy burden upon purchasers by its doctrine of constructive notice and *Hunt* v. *Luck* shows without question that a tenant's occupation affects a purchaser with notice of the tenant's rights. The legislature, first by the Conveyancing Act, 1882, and now by the Law of Property Act, 1925, provides some relief for purchasers against the equitable doctrine. But a purchaser who wishes to enjoy that relief must bring himself within the terms of the statute conferring it and it appears that the Law of Property Act, 1925, s. 199 (1), does not relieve against notice arising from actual occupation if that occupation is within the actual knowledge of the purchaser or would have come to his notice had he made proper inspection. It may well be that Harman, J., was right when he said that the intention of the legislature was to get rid of such equitable rights but it appears that it did not succeed in giving effect to those intentions.

In the *Hollington Bros., Ltd.* v. *Rhodes* (*supra*) type of case, where the purchaser takes expressly subject to the tenant's rights, the fact of his occupation is undoubtedly within the purchaser's knowledge : if it were not, or in any other case, it would come to his knowledge if he made any inspection of the premises. Hence he takes subject to the rights of the tenant (whatever those rights may prove to be) and this by reason of the fact of occupation and not by reason of the existence of the agreement. But the difficulties of the tenant do not end there. The rights which he claims spring from his agreement and it is provided by the Land Charges Act, 1925, s. 13 (2), that, unless it is registered such an agreement is void against the purchaser. Thus it would appear that, having established that the purchaser takes subject to the tenant's rights whatever they are, it is found that they are non-existent since their source is by statute rendered void.

*Conveyance Expressed to be subject to Tenant's Rights.*

It may be asked whether, in the *Hollington Bros., Ltd.* v. *Rhodes* (*supra*) type of case, where the purchaser has taken expressly subject to the rights of the tenant and those rights are set out and quantified in the conveyance to the purchaser, the tenant when called upon to quantify his rights may do so by reference to what the purchaser has himself admitted them to be and without reference to the agreement. At first sight the suggestion is attractive but it is thought that it is not sound. Had the tenant been a party to the contract of sale or to the conveyance or assignment or had some representation been made to him then he could claim that the purchaser was estopped from denying that the rights of the tenant were as he (the purchaser) had stated them

to be. But in the absence of estoppel it does not seem that the rights which spring from an agreement which is by statute made void (not be it noted voidable) can be validated by reason of the fact that the opposing party has erroneously stated that they exist. Nor does it seem possible to say that the purchaser has waived any benefits which the Land Charges Act, 1925, s. 13 (2), has conferred upon him. That section does not, as does the Law of Property Act, 1925, s. 199 (1), provide that the purchaser shall not be prejudicially affected, it says, in terms, that the agreement shall be void and that being so it does not seem that the purchaser has any power to validate it.

There still remains the argument that the only interest in the land which the purchaser has bought is subject to the rights of the tenants. Looked at one way, it will be said that this fails for the reason given above—*vis-à-vis* the purchaser the tenant has no rights. But it may be looked at another way; the alleged tenancy in *Hollington Bros., Ltd.* v. *Rhodes* was for seven years and it may be argued that by the terms of their agreement the interest which the purchasers had bought, whatever it did include, did not include possession of that part of the premises let to the plaintiffs until the expiration of seven years from the date of the alleged agreement. If that be accepted then it must follow that whoever is or is not entitled to possession during that time is no concern of the purchasers—they at any rate are not so entitled. Any such dispute would be between the vendors and the tenant and, of course, there is no question of the Land Charges Act, 1925, s. 13 (2), making the agreement void as between them. One further point may be raised : the assignment was not only subject to but with the benefit of the agreement, that is to say, on the face of it, the purchasers were entitled to receive rent from the tenant. Does this make any difference? It is submitted that it does not : the Land Charges Act, 1925, s. 13 (2), says nothing of making the agreement void as against the tenant and in favour of the purchaser.

Whether or not the argument submitted in the previous paragraph can prevail is not a matter about which one can be dogmatic. It is still open to a Court of first instance to accept it since Harman's rejection of it in *Hollington Bros., Ltd.* v. *Rhodes* (*supra*) was purely *obiter dicta*. It receives some support from the *dicta* of the Privy Council in *Ram Narain's Case*. Finally, it has everything to commend it upon the merits of the case.

*Conveyance not Expressed to be Subject to Tenant's Rights.*

To turn to the cases, such as *The Coventry Case*, where the purchaser has not taken expressly subject to the rights of the

tenant. It has been shown above that the Law of Property Act, 1925, s. 199 (1), does not protect the purchaser if the tenant can prove that he has any rights which are not rendered void by the Land Charges Act, 1925, s. 13 (2). The question is, can he prove the existence of any such rights. It seems that he can prove two facts, as facts, without reference to any agreement void or not. First, that he is in possession, secondly that whilst he is in possession he has paid a weekly, monthly or yearly rent as the case may be. Now where his landlord had a legal estate as in *The Universal Case* or in *Hollington Bros., Ltd.* v. *Rhodes* these two facts gave rise to a presumption that the tenant had a legal periodic tenancy as was so held in *The Universal Case* and was so admitted in *Hollington Bros., Ltd.* v. *Rhodes*. That being so his periodic tenancy was binding upon the purchaser : where it is protected by the Rent Restriction Acts that is enough. But in *The Coventry Case*, if its first branch was rightly decided, and in the case where the equitable tenancy has been granted by a sub-vendor who subsequently " drops out " the landlord never had a legal estate so the tenant never had a legal periodic tenancy. What he did have, it is submitted, is an equitable periodic tenancy, for equity follows the law, and one moreover which does not depend upon the terms of any agreement. It is submitted, therefore, that that equitable periodic tenancy, since it does not owe its origin to any agreement which is made void by the Land Charges Act, 1925, s. 13 (2), is binding upon the purchaser since, for the reasons given above, the Law of Property Act, 1925, s. 199 (1), does not absolve the purchaser from being affected by notice of it.

*Collateral Rights.*

It only remains to consider, very briefly, whether any protection is given to collateral rights such as options to purchase. Obviously, where the conveyance or assignment is not made expressly subject to them they cannot be binding upon a purchaser since they cannot be proved independently of the agreement which is made void. If the conveyance or assignment is made expressly subject to them then it might be possible to apply the argument which was rejected in *Hollington Bros., Ltd.* v. *Rhodes* (*supra*). But it is thought that it would meet with even more difficulties than in the straightforward case of the tenant's rights *qua* tenant.

# ESTATE COMPANIES AND THE 45 PER CENT. ABATEMENT

By A. E. Brooke

of The Country Gentlemen's Association, Ltd.

Landed estate companies have served their purpose in many ways but there is little advantage if a company is beneficial in one direction but has distinct disadvantages in another—beware the loss of the 45 per cent. abatement in respect of death duties on agricultural property.

It is difficult to estimate the number of landed estate companies on the Register today but there must be several hundreds. I know of at least two hundred estate companies in the United Kingdom, all of which own or have an interest in agricultural property and there must be very many more both large and small.

For Estate Duty purposes these companies can be divided into two classes:—

(i) Those having only a limited interest in agricultural property.

(ii) Companies owning property in fee simple.

## Limited Interests

A tenant for life of settled land assigns his life interest to the company, the consideration being satisfied by the issue of shares. By reason of his shareholding he controls the company and is in all probability a director.

When he dies the company loses its main asset, *i.e.*, the late life tenant's interest in the settled funds, and, by reason of the cesser of that life interest, the capital funds are deemed to pass under the provisions of the Finance Act, 1940, s. 43 (as amended by the Finance Act, 1950, s. 43). The Estate Duty liability is a charge on the settled estate, the accountable persons being the trustees. Inasmuch as the trust property is of an agricultural nature the 45 per cent. abatement applies.

The shares held by the deceased have to be valued in the ordinary way, but as the company loses its main asset at the

moment of his death they are valued by reference to the company's other assets, such as cash at bank, etc., any liabilities being taken into account. As a great many estate companies run at a loss (particularly where there is no income from investments or ground rents) these shares may be more or less valueless as the company's liabilities may absorb practically all its assets.

It would seem, therefore, that where a company acquires a life interest in settled funds, the Estate Duty liability is in no way affected by the transaction. The funds pass on death in the same way and at the same rate as if the company had not been formed.

### Absolute Interests

The danger of losing the 45 per cent. abatement lies in the case where an estate owner transfers the freehold of his agricultural estate to a company. Whether the consideration is settled by the issue of shares or debentures or is left outstanding as a debt due to him from the company, the abatement may be lost.

To take a simple and straightforward case, where the landowner transfers his estate to the company in exchange for the whole of the issued share capital (except for the two subscribers' shares), on his death the shares pass and, not only is the 45 per cent. abatement lost, but, as he controlled the company, the shares are not valued at their estimated market price but under the provisions of the Finance Act, 1940, s. 55. Under this section the shares are valued by reference to the assets of the company, *i.e.*, at their true "break up" value and that value is not discounted by reason of the shares being non-income producing or by any other factors normally taken into account when valuing shares of a private company.

It is clear, therefore, that, as the shares are valued by reference to the company's assets (which would have passed as the deceased's free estate had the company not been formed) and as these assets are of an agricultural nature, the estate duty liability in respect of the landed property has almost been doubled by reason of the formation of the company, coupled with the holding of 100 per cent. of the share capital. It is a mistaken idea that in cases of this nature the agricultural abatement is granted by concession—in practice the Estate Duty Office claim duty at the full rate.

It is not only when the deceased held all the issued share capital of a company that his shares are caught under section 55—indeed he need not have been a majority shareholder. If he was entitled to more than half of the total dividends and interest or

controlled the company either by reason of his shareholding or by his powers as a governing director, then the 45 per cent. abatement would be lost in respect of that part of the company's agricultural assets reflected in the value of his shareholding and his shares would be valued under section 55. It would appear that a sole director of a company (who thus would be deemed to have the powers of a board of directors), even if he held less than 50 per cent. of the shares, would come within the scope of section 55. The provisions of section 55 are very wide in their application. Unlike the Finance Act, 1940, s. 46, it is not only the transferor of property to a company who is assessed under section 55, but any controlling or majority shareholder no matter how he acquired the shares. (Where a shareholder is entitled to at least half the nominal amount of the shares and debentures, his shares are not caught by the section where some other person had control of the company.)

The shares of a beneficiary of a trust may also be caught. An estate owner might transfer his estate to a company and place the shares in trust for his son with the idea that estate duty will be reduced on his own death. The son might predecease his father. The shares in trust would be assessed under the provisions of section 55 for the reason, to quote from the section, that " the deceased had at any time during those three (now five) years [referring to the time immediately preceding his death] a *beneficial interest in possession* in shares . . . of an aggregate nominal amount representing one-half or more of the aggregate nominal amount of the shares . . . then issued . . . and no other person had at that time the control of the company . . .". It might be thought that, as the trustees of the settlement had control by reason of their majority shareholding, the shares so held in trust would not be valued by reference to the section, but subsection 5 of the section states " control of a company which a person had in a fiduciary capacity shall be disregarded for the purposes of this section ".

In this explanation of section 55 reference has only been made to shares, but debentures are assessed in a similar manner. It must be remembered that debentures carry no votes, so that the majority holder does not necessarily control the company. The provisions of section 55 bring within their scope a deceased person who had debenture interest amounting (with dividends on shares held by him) to more than half the interest and dividends paid within the five years preceding death, including a life tenant who had a beneficial interest in debentures amounting to half or more

than half of the issued shares and debentures of a company, unless in the latter case some other person controlled the company.

If a person transfers an agricultural estate to a company in fee simple and the consideration is left outstanding as a debt due to him by the company, should he die, the 45 per cent. abatement is lost, for, instead of the estate passing at the reduced rate, the loan due to him is included in the Estate Duty account.

It must not be thought, however, that, because a person transfers his freehold estate to a company, the 45 per cent. abatement is necessarily lost—at least not when the transferor dies. He may sell his estate to the company, the consideration to be satisfied by the issue of shares and by his direction the shares allotted to various members of his family. When the original estate owner dies the Finance Act, 1940, s. 46, comes into operation. It is important to note that this section only applies to persons who have transferred property to a company which is controlled by not more than five persons. It does not apply to persons who have not transferred property to a company although those persons may be intimately connected with the company. The transferor of the agricultural estate having given away all the shares may have director's fees or other income from the company, which, for the purpose of section 46, are defined as benefits from the company. When he dies such proportion of the company's assets is deemed to pass as the amount of benefits he received (averaged over the five years preceding his death) as the company's net income (averaged over the same period) computed on an actuarial basis as for income tax purposes. Inasmuch as the company's assets are of an agricultural nature the 45 per cent. abatement applies.

It must be stressed, however, that although the 45 per cent. abatement is not lost on the death of the original estate owner, the evil day is only postponed—as and when shareholders die the shares pass and no 45 per cent. abatement is allowed. It is true that by splitting the shares up into small holdings no one person may have control of the company so that section 55 may not apply, but in these days of small families it is not easy to spread the shares over a number of persons. No person outside the family would in all likelihood want to hold shares which in the vast majority of cases are non-income producing, quite apart from the fact that most estate companies are of unlimited liability.

The estate owner may transfer his estate to a company but only give away, say, 60 per cent. of the shares. If he received benefits from the company it would appear that his shares would pass and a proportion of the company's assets would also be deemed to pass.

In order to avoid a duplication of duty the provisions of the Finance Act, 1940, were amended by the Finance Act, 1944, s. 38, to the effect that if the assessment to duty under section 46 is greater than the value of the shareholding, then the latter value is to be deducted from the assessment under section 46 and Estate Duty paid on the value of the shares and also on the balance of the assessment under section 46. It will be readily appreciated that the 45 per cent. abatement is lost on the value of the shares but retained for the balance of the assessment under section 46. If the value of the shares is greater than the assessment under section 46, then Estate Duty is only paid on the shares.

If the transferor of property retains more than fifty per cent. of the shares (unless some other person has control of the company), or is deemed to have control of the company by other means than a majority shareholding, or has more than half the dividends and debenture interest, then both sections 46 and 55 apply, but in most cases where there is a fairly large shareholding, it will be found that the valuation of shares is greater than the assessment under section 46, so that the abatement is invariably lost. It is only when the transferor retains a small percentage of shares that he has the benefit of the abatement—at least for part of the assessment to Estate Duty.

The following figures show how serious the loss of the abatement can be:—

(i) A is the tenant for life of agricultural property with a capital value of £100,000. He assigns his life interest in the property to a company for £10,000, satisfied by the issue of shares. He has other assets of £30,000.

Estimated Estate Duty liability:—

| | £ | £ |
|---|---|---|
| Agricultural property £100,000 @ 50% .. .. .. .. | 50,000 | |
| *Less* abatement @ 45% .. .. | 22,500 | |
| | | 27,500 |
| 10,000 shares valued by reference to company's remaining assets, say: £500 @ 50% .. | | 250 |
| Other assets £30,000 @ 50% .. | | 15,000 |
| Duty payable | | £42,750 |

(ii) B owns an agricultural estate in fee simple valued at £100,000 and other assets of £30,000. He transfers the estate to a company in exchange for £100,000 shares.

Estimated Estate Duty liability:—

| | £ |
|---|---|
| 100,000 shares valued by reference to the company's assets, say: £100,500 @ 50% .. | 50,250 |
| Other assets £30,000 @ 50% .. .. .. | 15,000 |
| Duty payable | £65,250 |

It will be appreciated that by reason of the company owning an absolute interest instead of a limited interest, the Estate Duty liability in respect of the shareholder's death has been increased by £22,500.

(iii) C, the owner of an estate in fee simple valued at £100,000, transfers the freehold to a company, the consideration being satisfied by the issue of 100,000 shares. By his direction all the shares are allotted to members of his family, but he is appointed managing director at a salary of £2,000 per annum which absorbs all the company's surplus income. Under the provisions of the Finance Act, 1940, s. 51 (4), £500 of the salary is deemed to be reasonable remuneration for services rendered to the company and thus that sum is not a benefit for the purposes of section 46.

Estimated Estate Duty liability:—

| | £ | £ |
|---|---|---|
| Assessment under section 46 £$\frac{1,500}{2,000}$ × 100,000, | | |
| *i.e.*, £75,000 @ 50% .. .. | 37,500 | |
| *Less* abatement @ 45% .. | 16,875 | |
| | | 20,625 |
| Other assets £30,000 @ 50% .. | | 15,000 |
| Duty payable | | £35,625 |

It will be appreciated that the Estate Duty payable is nearly 50 per cent. less than in (ii) above, but the shares are still held by members of the family. Thus there is the ever present risk of a death and the loss of the abatement.

(iv) D transfers his estate valued at £100,000 in the same way as C but retains 25,000 shares as well as having a managing director's salary of £2,000 which absorbs the company's surplus income, £500 of which is treated as reasonable remuneration.

| | | | £ |
|---|---|---|---|
| Estimated Estate Duty liability:— | | | |
| 25,000 shares @ 15s. each = £18,750 @ 50% | | | 9,375 |
| Assessment under section 46:— | | | |
| £$\frac{1,500}{2,000}$ × 100,000 = | £ 75,000 | | |
| *Less* value of shares | 18,750 | | |
| | 56,250 @ 50% | £ 28,125 | |
| *Less* abatement @ 45% | | 12,656 | |
| | | | 15,469 |
| Other assets £30,000 @ 50% | | | 15,000 |
| | | Duty payable | £39,844 |

By reason of his minority shareholding the Estate Duty liability arising on the transferor's death is increased by some £4,000. If he was deemed to have controlled the company by reason of his managing directorship the shares would be valued at par (under section 55) thus giving a greater liability.

### Reconstruction of Existing Companies

Where there is in existence a company owning agricultural property in fee simple which has a majority shareholder so that in due course an assessment to Estate Duty under section 55 will arise (as in (ii) above), the remedy is to change the company's absolute title to a limited one.

The method in achieving this change depends largely on the structure of the company. If of unlimited liability it can take powers in its articles of association to accept the surrender of its issued shares for any reason whatsoever, including in exchange for any of its assets: the shares so surrendered to be reissued or cancelled under the authority of the directors. The original estate owner can then surrender his shares to the company in exchange for the agricultural estate. (At this stage of the reconstruction it would appear that, should he die, the 45 per cent. abatement would apply.) Having received the estate back from the company the owner can then assign to the company "an interest for his life" in the property. This interest is in effect "carved out" and created. On his death by reason of the cesser of the interest the capital funds pass, and, inasmuch as they are of an agricultural nature, the abatement applies.

Where a limited company is concerned, as it cannot accept a surrender of its own shares it is usually found that the most

effective economical means of achieving the change is liquidation. The company resolves to wind up and gives the liquidator power to distribute the assets of the company to the shareholders in specie. The estate is passed to the original owner as a distribution, a new unlimited company is formed, " an interest for his life " is carved out and assigned to the new company.

It is not possible to more than generalise as above as to the steps to be taken to avoid the loss of the 45 per cent. abatement. Each case must be carefully considered as the circumstances of no two companies are exactly alike. In particular, the taxation position must be examined and taken into account when carrying out any reconstruction.

That these companies must be reconstructed there can be no doubt—for the majority shareholder to give away his shares is no solution—it only puts off the evil day. When a death does occur which results in the loss of the abatement and an assessment under section 55 the heir to the property quite rightly asks, " Why was this allowed to happen? "

# RELIEF FROM FORFEITURE OF LEASES

By J. B. Sweetman, LL.B., Solicitor

The right of a lessee to apply for relief from forfeiture of his lease for breach of covenant is generally governed by section 146 of the Law of Property Act, 1925, though it has to be remembered that section 147 of that Act gives a further protection in the case of an attempted forfeiture for breach of covenant to do internal decorative repairs in certain limited circumstances, and that there are other statutory provisions which also afford a lessee protection —including the Leasehold Property (Repairs) Act, 1938, the Rent Restriction Acts, the Agricultural Holdings Act, 1948, and, for the moment, the Leasehold Property (Temporary Provisions) Act, 1951. As regards forfeiture for non-payment of rent, relief may *not* be claimed under section 146 of the Law of Property Act, 1925, by a lessee, but he may apply for relief under the Common Law Procedure Act, 1852, under which the rights and obligations of the parties are rather different from those arising in the case of an application for relief under section 146 of the Law of Property Act, 1925.

## Position of Lessee under Section 146, Law of Property Act, 1925

Section 146 (1) of the Law of Property Act, 1925, provides:— "A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach;

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach".

Section 146 (2) reads as follows:—"Where a lessor is proceeding by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any,

or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit ".

This section replaces the repealed section 14 of the Conveyancing and Law of Property Act, 1881, and the leading case on the principles to be adopted in considering applications for relief under that section is equally applicable at the present time. There have been many cases both before and since that of *Rose* v. *Spicer*, [1911] 2 K. B. 234 (C. A.), in which it has been necessary to discuss the principles to be followed, but the following words of Cozens-Hardy, M.R., in that case seem to sum up the position as accurately as it can be stated: " I am aware of the danger of defining the mode in which discretionary powers of this nature ought to be exercised. Yet I think it expedient to attempt to lay down some general principles. In the first place the applicant must, so far as possible, remedy the breaches alleged in the notice and pay reasonable compensation for the breaches which cannot be remedied. In the second place, if the breach is of a negative covenant, such as not to carry on a particular business on the demised premises, the applicant must undertake to observe the covenant in future, or at least must not avow his intention to repeat the breach complained of. In the third place, if the act complained of, though not a breach of a negative covenant, is of such a nature that the Court would have restrained it during the currency of the lease on the ground of waste, the applicant must undertake to make good the waste if it be possible to do so. In the fourth place, if the act complained of does not fall under either the second or the third head, but is one in respect of which damages, other than nominal, might be recovered in an action on the covenant, the applicant must undertake not to repeat the wrongful act or to be guilty of a continuing breach.

" In short, subject only to the maxim *de minimis*, the applicant must come into Court with clean hands, and ought not to be relieved if he avows an intention to continue or to repeat a breach of covenant ".

(It may be noted that the decision in this case was reversed on the construction of the lease, but the House of Lords approved the

rules as useful, though not universally applicable, maxims—*Hyman* v. *Rose*, [1912] A. C. 623.)

Study of the line of cases which have followed *Rose* v. *Spicer* does not really add very much to the rules laid down by Cozens-Hardy, M.R., but indeed, on the contrary, serves to emphasise that the intention of Parliament was to give the Court a wide and unfettered discretion to grant or refuse relief as it thinks fit according to all the particular circumstances of each case, and that no general principles can or should be formulated. (See the remarks of Morris, J., in *Egerton* v. *Esplanade Hotels, London, Ltd.*, [1947] 2 All E. R. 88, at p. 92.)

Nevertheless, one or two "tendencies" have emerged which may form useful guides to the line which the Court is likely to adopt, if no more than that.

(1) *The Court is likely to refuse relief where the breach is not capable of remedy at all.* (*Rugby School* (*Governors*) v. *Tannahill*, [1935] 1 K. B. 87.)

(It is often rather difficult to say whether a breach is "capable of remedy". In two cases where the premises had been used for a long time in breach of covenant, in one case as a disorderly house and in the other as a gambling resort, relief was refused owing to the moral stigma which was considered to have become attached to the premises in the hands of the present lessees (*Egerton* v. *Esplanade Hotels, London, Ltd.*, *supra*; *Hoffman* v. *Fineberg*, [1948] 1 All E. R. 592). On the other hand, it must not be assumed that every breach involving a criminal offence is incapable of remedy—*per* Harman, J., in *Hoffman* v. *Fineberg*. And allowing a distress to be levied may or may not be a breach capable of remedy (*per* Jones, J., in *Hartley* v. *Larkin* (1950), 66 T. L. R. (Pt. 1) 869)).

(2) *Relief is also likely to be refused where the breach cannot be speedily remedied.*

(In the case of *Eyre* v. *Rea*, [1947] 1 All E. R. 415, Atkinson, J., said that he knew of no case where relief had been given otherwise than on the basis of the breach being rectified *at once*; but in the later case of *Duke of Westminster* v. *Swinton*, [1948] 1 All E. R. 248, Denning, J., made it clear that no rule could be considered to have arisen to this effect, and in that case relief was granted subject to remedy of the breach within two years or such further time as the Court might allow.)

(3) *Whether a lessee has been negligent or not is not a decisive factor* (*Quilter* v. *Mapleson* (1882), 9 Q. B. D. 672 (C. A.)).

(On the other hand, a deliberate shutting of the eyes to use of premises by a sub-lessee as a brothel may disentitle a lessee to relief—*Borthwick-Norton* v. *Romney Warwick Estates*, [1950] 1 All E. R. 798 (C. A.); *Borthwick-Norton* v. *Dougherty*, [1950] C. L. Y. 2192, Pritchard, J.)

(4) *Relief will be granted only very sparingly in the case of a breach of covenant against assigning or sub-letting* (*Creary* v. *Summersell and Flowerdew & Co., Ltd.*, [1949] Ch. 751).

There are other more positive limitations on the power to grant relief to a lessee under section 146 (2). One curious instance is the case in which there are two joint tenants and one of them refuses to ask for relief; here the Court has no power to grant relief to the other (*Fairclough* (*T. M.*) *& Sons, Ltd.* v. *Berliner*, [1931] 1 Ch. 60). A more important limitation is that a lessee cannot apply for relief after the landlord has actually re-entered (*Rogers* v. *Rice*, [1892] 2 Ch. 170; cp. the provisions of the Common Law Procedure Act, 1852, where the breach consists of non-payment of rent). And under the provisions of section 146 of the Act itself, no relief can be sought by a lessee—

(1) in the case of a covenant as to inspection of books or mines, etc., in a mining lease (section 146 (8) (ii));

(2) on a condition for forfeiture on bankruptcy of the lessee or on taking in execution of the lessee's interest if contained in a lease of—

  (a) agricultural or pastoral land;

  (b) mines or minerals;

  (c) a house used or intended to be used as a public-house or beer-shop;

  (d) a house let as a dwelling-house, with the use of any furniture, books, works of art or other chattels not being in the nature of fixtures;

  (e) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding with him. (Section 146 (9).)

But in a lease of other types of property (a) if the lessee's interest is sold within one year from the bankruptcy or taking in execution, relief can be granted; and (b) if the lessee's interest is not so sold, application for relief can be made during the first year from the date of bankruptcy or taking in execution. (Section 146 (10).)

### Lessee's Position on Forfeiture for Non-Payment of Rent

This is governed by the Common Law Procedure Act, 1852, as amended and applied by the Common Law Procedure Act, 1860, and Judicature Act, 1925, s. 46. The rule in equity has always been that a proviso for re-entry on non-payment of rent is a mere security for the rent, and relief would be granted on payment of rent plus any expenses incurred by the lessor.

Under the 1852 Act, the lessee may pay or tender the arrears of rent with costs at any time before trial of the lessor's action for possession and will then hold the premises under the lease without any new lease (an assignee must pay arrears including those of his predecessors—*Barratt* v. *Richardson and Cresswell*, [1930] 1 K. B. 686). After trial and judgment, the lessee may still apply for relief within six months from the date when judgment was executed (C. L. P. A., 1852, s. 210). Similarly, if the lessor re-enters without going to Court, the lessee may claim relief within six months of the re-entry. In each case, if relief is granted, the lessee will hold under the old lease without grant of a new lease. The Court applies equitable principles in deciding applications for relief; the lessee must pay the lessor's costs properly incurred in the proceedings for relief.

### Position of Underlessee

The underlessee is not in the same position as is the head lessee *vis-à-vis* the head lessor, though as against his own lessor the provisions above apply.

As regards any breach, *whether for non-payment of rent or otherwise*, the underlessee is afforded protection by section 146 (4) of the Law of Property Act, 1925, which provides—"Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease or for non-payment of rent the Court may, on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, *make an order vesting*, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as underlessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise as the Court in the circumstances of such case may think fit, but in no case shall any such underlessee be entitled to require a lease to be granted to

him for any longer term than he had under his original sub-lease ".

It is clear that an underlessee will sometimes be granted relief under this provision where no relief to the lessee would be possible under the provisions already mentioned. For instance, where the head lessor enforces a covenant as to inspection of books in a mining lease, or on forfeiture on bankruptcy or taking in execution where the head lessee is barred from relief (under sub-sections (8), (9) and (10) of section 146, L. P. A., 1925) the underlessee may still apply for a vesting order. But the decided cases make it clear that the Court will not be disposed to grant a vesting order except very sparingly, and will not do so if the underlessee has been negligent or has omitted to make reasonable inquiry (*Imray* v. *Oakshette*, [1897] 2 Q. B. 218; *Matthews* v. *Smallwood*, [1910] 1 Ch. 777, where no inquiry was made as to necessity for the lessor's consent to a sub-letting; *Atkin* v. *Rose*, [1923] 1 Ch. 522, where the breach had been knowingly committed). It seems that the underlessee must be capable of satisfying the Court (a) that he has not been negligent, and (b) that he is otherwise entitled to relief on equitable principles on much the same grounds as a lessee would have to show under section 146 (2)—*e.g.*, an underlessee would not be granted a vesting order where there had been a breach incapable of remedy within a reasonable time.

It must be noted that, like a lessee claiming relief under section 146 (2), an underlessee applying for a vesting order under section 146 (4) will be too late if he defers his application until the head lessor has actually re-entered (*Rogers* v. *Rice*, [1892] 2 Ch. 170 (C. A.)).

The section gives a wide discretion to the Court as to the form which the vesting order should take. It has been continually emphasised that the terms of such an order must depend on all the circumstances of the case in question. The most likely form of order, however, appears to be that referred to in the judgment of Romer, L.J., in *Gray* v. *Bonsall*, [1904] 1 K. B. 601: "I think that the proper course, in giving relief to the underlessees, is to proceed under that section [section 4 of the Conveyancing and Law of Property Act, 1892] by vesting the premises in them for the term of the underlease, they covenanting with the lessors during that term to pay the rent reserved by the lease, and to perform the covenants therein contained as to the demised premises". Romer, L.J., added that it had been urged that there might have been breaches of the covenants for repair contained in the head lease, and that such breaches ought to be made good by the under-lessees, and added—"If the lessors succeed in showing the existence

of such breaches, then it must be made a condition of granting the relief that they should be made good ".

It is to be noted that the rent under the new lease may be greater than the rent under the underlease (*Ewart* v. *Fryer*, [1901] 1 Ch. 499).

In respect of a forfeiture for non-payment of rent, the underlessee is also entitled to claim relief against forfeiture of the head lease under the Common Law Procedure Act, 1852. The difficulty about this procedure is that, unless the underlessee applies before the actual determination of the lease, he must normally bring the original lessee and, where the lease has been assigned, the last assignee, before the Court (an exception was made where the lessee had gone bankrupt and his trustee in bankruptcy had assigned to an assignee who had disappeared for twenty-six years (*Humphreys* v. *Morten*, [1905] 1 Ch. 739). The reason is that, where the head lease has been actually determined, the effect of an order under the 1852 Act is to revive it, and not to vest a new term in the underlessee.

### Protection under Various Statutes

1. *Under the Law of Property Act*, 1925, *s.* 147 (1), a lessee on whom notice has been served relating to *internal decorative repairs* to a house or other building may apply to the Court for relief, and if, having regard to all the circumstances of the case (including in particular the length of the lessee's term or interest remaining unexpired) the Court is satisfied that the notice is unreasonable, it may by order wholly or partially relieve the lessee from liability for such repairs. The generality of this provision is, however, very much whittled down by sub-section (2), which provides that the section does *not* apply (i) to an express covenant to put the premises in a decorative state of repair which has never been performed, (ii) to any matter necessary or proper for putting or keeping the property in a sanitary condition or for the maintenance or preservation of the structure, (iii) to any statutory liability to keep a house reasonably fit for human habitation, or (iv) to a covenant to yield up the house in a specified state of repair at the end of the term.

2. *Under the Leasehold Property* (*Repairs*) *Act*, 1938, where a notice is served under L. P. A., 1925, s. 146, relating to breach of covenant to *keep or put in repair* during the currency of a lease for a term of twenty-one years or more a house of rateable value not exceeding £100, and at the time of service of the notice five years or more of the term remain unexpired, the lessee may within twenty-eight days serve a counter-notice, and in such case no

proceedings by action or otherwise are to be taken by the lessor for enforcement of any right of re-entry or forfeiture except with leave of the Court (normally the county court). The Act (section 1 (5)) provides that leave shall not be given unless the lessor proves one of certain things, briefly (a) that remedy of the breach is necessary to prevent substantial diminution in value of the reversion, (b) that it is necessary to comply with by-laws, etc., relating to safety repair maintenance or sanitary condition of houses, (c) where the lessee only occupies part, that remedy is required in the interests of the other occupier, (d) that the expense of immediate remedy would be small compared with that occasioned by postponement, or (e) special circumstances rendering it just and equitable to grant leave.

The Act does not apply to an obligation to *put* a house in repair upon taking possession of the premises or within a reasonable time thereafter (section 3).

3. *Under the Rent Restrictions Act*, 1933, *s.* 3, no order is to be made for recovery of possession of any dwelling-house to which the Rent Acts apply unless (1) the Court considers it reasonable to make such an order *and* (2) *either* suitable alternative accommodation is available *or* one of the provisions set out in the First Schedule to that Act is applicable. The relevance of this in the present context is that the First Schedule specifies (amongst other grounds) that an order may be made where rent has not been paid or any other obligation of the tenancy consistent with the provisions of the Acts has been broken or not performed, or where the tenant or his lodger or sub-tenant has been guilty of a nuisance or annoyance to adjoining occupiers, of using the premises for immoral or illegal purposes, or of allowing the condition of the house to deteriorate.

On consideration of a claim for recovery of possession in such a case, the Court will have to consider whether it is " reasonable " to make the order, and will apply very similar considerations to those which it will have in mind when an application for relief is made under section 146 (2) of the Law of Property Act, 1925 (*Yates* v. *Morris*, [1951] 1 K. B. 77 (C. A.)).

Nevertheless, the analogy is not absolute and the Court may grant possession in a case where, had the tenancy been a contractual one, the tenant would have had a statutory right to relief, provided that it is satisfied that it is " reasonable " to grant possession (*Dellenty* v. *Pellow*, [1951] 2 All E. R. 716, C. A.).

4. *Under the Agricultural Holdings Act*, 1948, a general restriction is imposed (section 24) on the efficacy of a notice to quit an agricultural holding as defined in that Act, if the tenant serves a

counter-notice within one month, unless the Minister of Agriculture and Fisheries consents to the operation thereof. The section does not apply (sub-section (2) (*d*)) where a notice as specified has been served on the tenant to pay any rent due or to remedy a breach by the tenant that is capable of being remedied of any term or condition of his tenancy not inconsistent with the rules of good husbandry, and the tenant has failed to comply within two months.

This is not a case where forfeiture is being claimed under a power of re-entry, but if the tenant serves the counter-notice, one must consider the application of sub-section (2) (*d*), which determines whether consent of the Minister is necessary for the notice to quit to become effective.

5. *Under the Leasehold Property (Temporary Provisions) Act*, 1951, leases of dwellings exceeding twenty-one years expiring before June 22, 1951, or between that date and two years thereafter, are in certain circumstances continued until the end of that period of two years. Under section 5 of that Act definite restrictions are placed on the right of the landlord to exercise any right of forfeiture or re-entry in such cases except for non-payment of rent or rates, failure to insure, or use for illegal or immoral purposes by the present tenant. (The superior landlord is also restricted from re-entering except on the last ground.) The tenant or sub-tenant need therefore have no fear of forfeiture for any other breach of covenant.

Shop owners whose tenancies would expire in the two-year period are given a right in certain circumstances to apply to the Court for the grant of a new tenancy (section 10) but one of the grounds on which the Court (normally the County Court) must refuse such a grant is that it is satisfied that the tenant has broken any of the terms or conditions of the expiring tenancy and that in view of the nature and circumstances of the breach a new tenancy ought not to be granted (section 12 (3) (*a*)).

This provision seems to have some taste in it of the Rent Act provision mentioned above. The Court must consider first whether there has been a breach, and, if so, whether it is such that a new tenancy should be refused. Presumably it will, in its wide discretion under section 12 (1), apply somewhat similar considerations to those applicable in cases under the Law of Property Act, 1925, s. 146 (2).

# THE SPECIAL POSITION OF LIMITED OWNERS OF AGRICULTURAL LAND

By E. H. Scammell, Barrister-at-Law

Owners of agricultural land are subject, at the present day, to two special sets of obligations. First, where they occupy the position of landlord, they may find themselves liable to pay compensation to an outgoing tenant for improvements and/or disturbance. Secondly, under the Agriculture Act, 1947, they must manage their land in accordance with the rules of good estate management and also, if in occupation, in accordance with the rules of good husbandry. It is obvious that each of these sets of liabilities may, and frequently will, involve considerable demands upon capital. Accordingly, it is a matter of some importance to tenants for life under the Settled Land Act and beneficiaries under trusts for sale of land to know the exact extent to which resort may be had to capital money for discharging these liabilities.

## Compensation for Improvements and Disturbance

*Improvements.*

Under the Agricultural Holdings Act, 1948 (hereafter referred to as "the A. H. A."), a tenant of an agricultural holding is entitled, on quitting the holding and in the circumstances provided by the Act, to obtain compensation from his landlord for such improvements carried out by him as are specified in the 2nd, 3rd, 4th and 5th Schedules to the A. H. A. (hereafter collectively referred to as "agricultural improvements"): sections 35, 46, 67 and 68, A. H. A. In this connection, "landlord" means "any person for the time being entitled to receive the rents and profits of any land" (section 94 (1), A. H. A.). Hence, in the case of settled land and land held upon trust for sale, the persons concerned with such claims are the tenant for life and trustees for sale respectively.

The only provision in the A. H. A. concerning the application of capital money for agricultural improvements is section 81 (1) which provides as follows:—

> "Where under powers conferred by the Settled Land Act, 1925, or the Law of Property Act, 1925, capital money is applied in or about the execution of any improvement specified in the Third Schedule to this Act no provision shall be made

for requiring the money or any part thereof to be replaced out of income, and accordingly any such improvement shall be deemed to be an improvement authorised by Part I of the Third Schedule to the Settled Land Act, 1925."

This provision does not, in itself, confer authority to apply capital money for *any* purposes. Before its provisions can operate, authority to apply the capital money must be found in the Settled Land Act (hereafter referred to as "the S. L. A.") or Law of Property Act (*a*). There are two possible sources in the S. L. A. of such a power, namely, section 73 (1) (iv) and section 109 (2). It seems clear that section 109 (2) is not the enabling power contemplated by section 81 (1), A. H. A. If any reasoning for this were required, it can be provided by a reference to section 81 (2), A. H. A., which is a provision similar to section 81 (1), A. H. A., except that it relates to powers conferred by the Universities and College Estates Act, 1925. This latter Act contains no provision corresponding to section 109 (2), S. L. A., but it does contain a provision similar in terms to section 73 (1) (iv) S. L. A., namely, in section 26 (1) (iii) of the Universities and College Estates Act. Section 81 (1), A. H. A., therefore seems to be referring to section 73 (1) (iv), S. L. A.

This being so, the existence of a power to apply capital money *directly* as compensation to an outgoing tenant for agricultural improvements falling within the Third Schedule to the A. H. A. must depend exclusively on the true construction of section 73 (1) (iv), S. L. A. This provision, as amended by section 96 (1) (a), A. H. A., provides that capital money may be applied :—

"In payment as for an improvement authorised by this Act of any money expended and costs incurred by a landlord under or in pursuance of the Agricultural Holdings Act, 1948, or any similar previous enactment, or under custom or agreement or otherwise, in or about the execution of any improvement comprised in the Third Schedule to the said Agricultural Holdings Act."

As far as it has been possible to ascertain, commentators on this provision either assume without argument that it authorises the application of capital money in payment of *compensation* (*b*),

(*a*) The existence of such authority in the Law of Property Act will depend upon the provisions of the S. L. A.—s. 28 (1), L. P. A. No further reference will therefore be made to the Law of Property Act.

(*b*) *E.g.*, Halsbury, *Laws of England*, Hailsham ed., Vol. I, p. 358 (marginal note); Spencer, *The Agricultural Holdings Act*, 1923 (8th ed.), p. 80; *The Conveyancer*, Vol. 14, p. 57.

or else express no opinion on the matter (*c*). Nowhere has the view been expressed that it does *not* authorise the payment of compensation out of capital money. It is a little surprising that in spite of the frequency with which demands for compensation must have been made during the past half century by tenants occupying settled land, there is not a single reported decision dealing with the point. There is, however, one reported dictum of Joyce, J., where the view is expressed that :—

> " The Agricultural Holdings Act, 1908 [in a provision corresponding to section 73 (1) (iv), S. L. A.], does no doubt provide that for certain kinds of improvements, for which a tenant is bound to have compensation, the necessary funds for compensating him may be paid out of capital moneys liable to be invested in land " (*d*).

These remarks, however, were expressed purely in passing, and it is submitted with respect that section 73 (1) (iv), S. L. A., does not in fact authorise the application of capital money for the payment of compensation. This opinion is based upon the following considerations :—

(1) The language of the provision itself seems, on the whole, inappropriate to the payment of compensation. Thus,
   (a) the provision is expressed to allow payment of capital money " as for an improvement authorised by this Act ". In connection with such an improvement, there is no power to apply capital money as *compensation* when the improvement is effected by a tenant;
   (b) the provision provides for the recoupment of the tenant for life " of any money expended and costs incurred". The word " expended " seems inapposite to the payment of compensation. The more natural word would have been " paid ";
   (c) power to apply capital money is given in respect of expenditure and costs incurred by a landlord " in or about the execution of " an improvement. These words do not seem to envisage the payment of compensation.

(2) The language of the provision, as read in the light of certain other statutory provisions, seems to exclude authority to apply capital money as compensation. Thus,

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(*c*) *E.g.*, Jackson, *Agricultural Holdings* (10th ed.), p. 203; Wolstenholme & Cherry, *Conveyancing Statutes* (12th ed.). Vol. 2, p. 1098; Hood & Challis, *Property Acts* (8th ed.), p. 498; Cripps, *The Agriculture Act*, 1947, p. 108.

(*d*) *Re De La Warr's Cooden Beach Estate*, [1913] 1 Ch. 142.

(a) section 87 (3), A. H. A., uses clear language to empower Commissioners of Crown Lands to apply capital as compensation in certain cases;

(b) Part I of the Landlord and Tenant Act, 1927, which concerns the payment of compensation to tenants of certain classes of property for certain improvements and goodwill, contains the following provisions:

> "13.—(1) Capital money arising under the Settled Land Act, 1925 (either as originally enacted or as applied in relation to trusts for sale by section twenty-eight of the Law of Property Act, 1925), or under the Universities and College Estates Act, 1925, may be applied
>
> (a) in payment as for an improvement authorised by the Act of any money expended and costs incurred by a landlord under or in pursuance of this Part of this Act in or about the execution of any improvement;
>
> (b) in payment of any sum due to a tenant under this Part of this Act in respect of compensation for an improvement or goodwill, and any costs, charges, and expenses incidental thereto;"

It will be noticed that paragraph (a) of this provision is similar in terms to section 73 (1) (iv), S. L. A. Yet it was thought necessary to legislate expressly in paragraph (b) to cover the case of the payment of compensation.

It is submitted, therefore, that unless the trust instrument otherwise provides, there is no authority to apply capital money directly in payment of compensation for agricultural improvements whether falling under the Third Schedule or not. This position may be more serious for a tenant for life under the S. L. A. than for trustees for sale since a tenant for life is perhaps not exempted from personal liability to pay compensation under section 71, A. H. A. (see section 73, A. H. A.), and he may similarly not be able to take advantage of section 82 (2), A. H. A., which entitles a landlord of an agricultural holding who is entitled to receive the rents and profits thereof "otherwise than for his own benefit" to obtain from the Minister of Agriculture and Fisheries (hereafter referred to as "the Minister") an order charging the holding with repayment of the compensation *before* actual payment to the tenant. With regard

to both these provisions, the question is whether a tenant for life does in fact receive the rents and profits " otherwise than for his own benefit ". In this connection the dual position of the tenant for life—as estate owner in fee simple and equitable beneficiary—may become important. It is clear that the tenant for life receives the rents and profits of the settled land in his capacity as estate owner (cf. *Schalit* v. *Nadler*, [1933] 2 K. B. 79) and that he applies them to his own use as beneficiary. But whether he would be regarded as one and the same person for the purposes of applying sections 73 and 82 (2), A. H. A., would seem to be a matter of some doubt. It is apparently assumed by writers on the subject that tenants for life are in fact entitled to receive the rents and profits of the land " otherwise than for their own benefit ", but no discussion ever appears showing exactly why this is so. It is possible, however, that the Courts would recognise the " dual personality " of tenants for life in this connection as they have tacitly done so in other connections: cf. *Re Liberty's Will Trusts*, [1937] Ch. 176; *Re Fitzwalter*, [1943] Ch. 285.

Unless section 82 (2), A. H. A., *does* apply to a tenant for life under the S. L. A., it seems that the only way in which a tenant's claim for compensation in respect of agricultural improvements can be met otherwise than out of the private capital of the tenant for life, is if the tenant himself takes the initiative and obtains an order from the Minister under section 72, A. H. A., charging the holding with payment of the amount due. Assuming section 82 (2), A. H. A., does not apply to a tenant for life, it will not lie in the tenant for life's power himself to obtain such a charge until *after* the compensation money has been paid : section 82 (1), A. H. A. In any case, the power of a tenant for life to obtain a charge under section 82 (1), A. H. A., as landlord, is more limited than the power of an outgoing tenant under section 72, A. H. A., in the following respects. First, a tenant may obtain a charge under section 72, A. H. A., in respect of *any* agricultural improvement whereas a tenant for life cannot obtain a charge in respect of improvements falling under the Fifth Schedule to the A. H. A. Secondly, a tenant for life's power to obtain a charge is limited by section 83 (3), A. H. A. Under this provision, where the landlord is not the absolute owner of the holding for his own benefit, no instalment or interest under a charge is to be made payable beyond the time when the improvement in respect of which compensation is paid will, in the opinion of the Minister, have become exhausted. This provision will, in effect, prevent a tenant for life from himself obtaining a charge where it is proposed to use the agricultural land

for purposes other than agricultural, since in such a case the improvement will immediately become exhausted : cf. *Re De La Warr's Cooden Beach Estate*, [1913] 1 Ch. 142.

In view of the above, when a tenant of a holding claims compensation from a tenant for life in respect of agricultural improvements, the tenant for life's best course would seem to be to do nothing in the first instance in the hope that the tenant will, instead of pursuing his possible personal remedy under section 71, A. H. A., apply to the Minister under section 72, A. H. A., for an order charging the land with payment of the amount due. The only certain alternative is for the tenant for life to find the compensation money privately and, if possible, thereafter obtain an order charging the land with repayment of the amount.

Once a charge in respect of improvements has been created on the land, section 73 (1) (ii), S. L. A., as amended by the A. H. A., authorises the payment of capital money :—

> " In discharge, purchase, or redemption . . . of any charge in respect of an improvement created on a holding under the Agricultural Holdings Act, 1948, or any similar previous enactment."

Having considered the circumstances in which a charge in respect of compensation moneys may be obtained, it remains to consider the circumstances in which trustees can discharge or redeem such a charge out of capital money under this provision. At first sight, it would seem that once the charge has been created, the tenant for life has merely to direct the trustees to redeem it so as to shift the burden from income to capital. But it is submitted that although the provision certainly does authorise payment of capital money in the discharge or redemption of such charges, such a payment would not affect the right of the remainderman to claim against the estate of the tenant for life to the extent to which the improvement had become exhausted during the running of the life interest. In *Re Duke of Manchester's Settlement*, [1910] 1 Ch. 106, a jointure rentcharge payable out of income was in arrears. Eve, J., held the trustees bound to carry out the tenant for life's direction to apply capital money to discharge the arrears under section 73 (1) (ii), S. L. A., but directed that any such payment should be " without prejudice to any question as to how and by whom and out of what fund such arrears ought ultimately to be borne ". On the other hand, where the charge in question is one which " affects the inheritance ", capital money may be applied in its discharge under section 73 (1) (ii), S. L. A., without the possibility of any subsequent reckoning : *Re Lord Gisborough's Settled*

*Estates*, [1921] 2 Ch. 39. Thus, since an improvement charge under the A. H. A. is of a terminable character and is payable out of income, the position seems to be that any payment which is made out of capital money to discharge such a charge must be without prejudice to the right of the remainderman subsequently to open the question of liability and claim accordingly. Further, unless this were the position, it would mean that whilst the cost of the tenant for life *himself* executing an agricultural improvement could not ordinarily be made to fall on capital money (subject to a charge being obtained under section 82 (1) (b), A. H. A., and redeemed out of capital money), the burden of paying *compensation* for such an improvement could, by the indirect means of charge followed by redemption out of capital money. Such a distinction would be illogical and, it is submitted, is not the result of section 73 (1) (ii), S. L. A. It is conceived, however, that no claim could be made by a remainderman until either the exhaustion of the improvement in respect of which the charge was originally created or the death of the tenant for life, whichever was the earlier, for, until such time, the question of apportionment could not be decided.

As far as trustees for sale are concerned, unless they are *beneficially* entitled to receive the rents and profits of the land, they are clearly entitled to the benefit of both section 73 and section 82 (2), A. H. A. Where, however, they are beneficially entitled to receive the rents and profits, then the question whether they could take advantage of these provisions raises the same doubts as exist in the case of tenants for life: *vide supra*.

*Disturbance.*

Unless the trust instrument otherwise provides, there is no power to apply capital money in payment of compensation for disturbance payable under section 34, A. H. A.: *Re De La Warr's Cooden Beach Estate*, [1913] 1 Ch. 142. If, however, the amount due is not paid, the outgoing tenant may obtain a charging order under section 72, A. H. A. It is submitted, however, that despite the clear wording of section 82 (1) (a), A. H. A., it is at least doubtful whether a tenant for life could himself obtain a charge on the land in respect of sums paid as compensation for disturbance in view of the wording of section 83 (3) (a), A. H. A., *supra*. In any case, there is no power under section 73 (1) (ii), S. L. A., for the trustees to apply capital money in redeeming or discharging a charge created in respect of such compensation. Where, however, a tenant for life serves a notice to quit on the tenant of an agricultural holding then presumably he will derive benefit from obtaining possession, and the rationale of his liability himself to find the

compensation for disturbance can perhaps be based on the principle, *qui sentit commodum sentire debet et onus.*

In the case of trustees for sale being compelled to pay compensation for disturbance, the money could *first* be raised by the procedure of obtaining a charge on the land under section 82 (2), A. H. A., and assigning it in consideration of the sum required. Alternatively, the sum involved could apparently be met out of income or the proceeds of sale of timber under section 102 (2) (g) and (3), S. L. A., where a sufficient sum is available.

### Liability for Good Estate Management and Good Husbandry

At common law and in the absence of anything to the contrary contained in the settlement, a tenant for life was not liable for permissive waste: *Re Cartwright* (1889), 41 Ch. D. 532. Moreover, although the doctrine of common law waste can now only apply in connection with terms of years absolute, since it is no longer possible to have a legal freehold estate less than a fee simple, nevertheless it has been assumed since 1926 that the old principles and rules of waste continue to apply, by analogy, to equitable interests in land. It was in fact decided, before 1926, that where successive interests were carved out of the equitable fee simple, the same principles of waste were applicable as would apply in the case of successive *legal* interests: *Dashwood* v. *Magniac*, [1891] 3 Ch. 306. It is true that nowadays the tenant for life will normally be the estate owner in fee simple, and that such an estate owner is expressly declared to be a trustee : section 16, S. L. A. But it was assumed in *Re Fitzwalter*, [1943] Ch. 285, and, indeed, in many provisions of the S. L. A., that regard must be had, not to estate ownership, but to beneficial ownership in determining liability for waste. Accordingly, the general position today seems to be that a tenant for life in equity is not liable for damage resulting to the inheritance by reason only of omissions.

In the case of agricultural land, however, positive duties are now imposed upon all owners and occupiers under the provisions of the Agriculture Act, 1947. In the case of an owner who is not also the occupier, section 10 (1) of the Act requires him to manage the land let and other land managed by him in a way which is reasonably adequate, having regard to all the relevant circumstances, to enable a reasonable farmer to maintain efficient production. In effect, an owner's liability in this connection is to provide, improve and repair "fixed equipment" on the land (section 10 (2)) in such a way as to satisfy the Minister of Agriculture and Fisheries : section 12 (1). In the case of an occupier, his duty is to maintain a reasonable

standard of efficient production : section 11 (1); in effect, such a standard as will satisfy the Minister : section 12 (1). As is indicated by section 11 (2), such a duty involves working the land in a manner suitable to the type of land in question, and in addition, may involve liability to maintain and repair (though not provide) fixed equipment except in so far as the owner is liable therefor.

With regard to agricultural land, therefore, tenants for life and trustees for sale of land will, in the future, frequently be finding themselves liable to expend perhaps considerable sums in respect of providing, maintaining and repairing items of fixed equipment on the land, with the sanction, in default of so doing, of a supervision order being made under section 12 of the Act. Two questions therefore arise in connection with these items. First, to what extent is capital money available for footing the cost of *providing* such items; secondly, to what extent, if at all, can capital money be applied in *maintaining and repairing* such items?

The general position with regard to the availability of capital money for constructive work and repairs was laid down in *Re De Teissier's Trusts*, [1893] 1 Ch. 153, where Chitty, J., said of the Settled Land Acts :—

> "It was not intended that alterations and improvements, much less repairs, should be paid for out of capital money except in the special instances provided for by the Acts."

This ruling was approved by the Court of Appeal in *Re Willis*, [1902] 1 Ch. 15, where it was applied to a case where the tenant for life was actually under an obligation to repair by the terms of the settlement. Apart, therefore, from a successful application to Court under section 64, S. L. A. (*e*), capital money may only be applied in providing, maintaining and repairing fixed equipment if the proposed action constitutes an improvement in respect of which capital money is authorised to be applied by statute. In this connection, improvements carried out by the tenant for life, and in respect of which, as between the beneficiaries entitled under the settlement, capital money is exclusively liable, are those contained in Part I of the Third Schedule to the S. L. A. (sections 73 (1) (iii) and 84 (2) (a), S. L. A.) and those contained in the Third Schedule to the A. H. A. (section 73 (1) (iv), S. L. A., and section 81 (1), A. H. A., as construed in *Re Duke of Northumberland, decd.*, [1951] Ch. 202 (*f*)). There is no general provision in either of these Schedules which authorises the application of capital money in the *establishment* of fixed equipment, but there is a general provision

(*e*) As amended by s. 2 of the Settled Land and Trustee Acts (Court's General Powers) Act, 1943: cf. *Re Scarisbrick*, [1944] Ch. 229.

(*f*) See, however, as to this case, *infra*.

dealing with the *repair* of existing fixed equipment. Accordingly, in order to test the precise application of the statutory provisions, it is necessary to deal with these two questions separately.

*The Provision of Fixed Equipment.*

Since there is no general authority to apply capital money in the *provision* of fixed equipment, it is necessary broadly to analyse the scope of items which may constitute fixed equipment. Fixed equipment is defined by section 109 (3) of the Agriculture Act, 1947, as including :—

> " Any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from land, consumption of the thing grown or of produce thereof, or amenity ".

Equipment falling within this provision may be divided into three groups as follows :—

(1) Buildings and structures *affixed* to land. *Quære*, whether a Dutch barn, which simply *rests* upon brick foundations, would be included, cf. *Elwes* v. *Maw* (1802), 3 East 38.

(2) Works on, in, over or under land. This would presumably include matters such as are more particularly specified in paragraph (xiv) of Part I of the Third Schedule to the S. L. A., *e.g.*, water pipes, reservoirs, etc.

(3) Anything grown on the land for a purpose other than for gaining its fruits or for use or consumption after severance. Hedgerows for fencing in cattle and trees planted to prevent erosion would presumably be examples of what was intended.

(1) Buildings and structures. Such matters may constitute an improvement under paragraph 8 or 17 of the Third Schedule to the A. H. A., or any of the following paragraphs of Part I of the Third Schedule to the S. L. A. : paragraphs (ii), (vi), (xi), (xii), (xiii), (xv), (xvi) or (xxii). There appears to be ample scope in respect of this group.

(2) Works on, in, over or under land. Such matters may be improvements under any of the following provisions : paragraphs 13, 16, 20 and 22 of the Third Schedule to the A. H. A., and paragraphs (i), (iii), (iv), (v), (xiv), (xix) and (xxi) of Part I of the Third Schedule to the S. L. A. In this connection, mole drainage (which does not benefit the land for more than six to eight years) is expressly excluded from the improvements under the Third Schedule to the A. H. A. (paragraph 20), but would appear to fall

within the scope of paragraph (i) of Part I of the Third Schedule to the S. L. A., which relates to drainage generally.

(3) Anything grown on the land for a purpose other than gaining its fruits or for use or consumption after severance. A perusal of the Third Schedules to the A. H. A. and S. L. A. fails to reveal anything which might reasonably be construed as falling within this category. Accordingly, there seems to be no power to apply capital money to discharge the cost of providing fixed equipment falling within this group.

*Maintenance and Repair of Fixed Equipment.*

Section 73 (1) (iv), S. L. A., as amended by section 96 (1) (a), A. H. A., provides that capital money may be applied in payment "of any money expended and costs incurred by a landlord . . . in or about the execution of any improvement comprised in the Third Schedule" to the A. H. A. Paragraph 23 of this Third Schedule lists as an improvement :—

> "Repairs to fixed equipment, being equipment reasonably required for the proper farming of the holding, other than repairs which the tenant is under an obligation to carry out."

From the fact that section 73 (1) (iv), S. L. A., is expressed to apply only when the tenant for life expends money and incurs costs as "landlord", it might have been assumed that the property which was to benefit from the repairs was required to be let to a tenant (*g*). Further, such an assumption might have been fortified by the appearance of the word "holding" in paragraph 23 above. (See section 1 (1), A. H. A.) In *Re Duke of Northumberland, decd., supra*, however, it was held that the word "landlord" in section 73 (1) (iv), S. L. A., should be construed by reference to section 94 (1), A. H. A., which defines a landlord as "any person for the time being entitled to receive the rents and profits of any land". This definition was then construed in its widest sense so as to produce the result that section 73 (1) (iv), S. L. A., applied whether or not the land which was to benefit was let. The report contains no mention of the significance, if any, of the word "holding" in paragraph 23, although this paragraph was in question, but that word can, in point of fact, be explained away on a reference to certain other provisions of the A. H. A. where it is obviously used simply to denote "land" (*e.g.*, sections 72, 73, 82 and 83). With regard, however, to the interpretation placed by Vaisey, J., upon the word "landlord", objection might, it is submitted with respect, be taken. Even assuming it was right to refer to the

(*g*) See *The Conveyancer*, Vol. 14, pp. 55–56.

A. H. A. in order to construe a provision in the S. L. A., it seems that the learned judge's decision on the meaning of the statutory definition is somewhat wide. In *Tombs* v. *Turvey* (1923), 73 L. J. K. B. 785, Bankes, L.J., had little doubt that this definition presupposed the existence of a tenant. At p. 787 he said :—

> " Now ' landlord ' is defined by section 48, sub-section 1, of the Act of 1908 [Agricultural Holdings Act, 1908—now re-enacted in section 94 (1), A. H. A.] as being ' Any person for the time being entitled to receive the rents and profits of any land '. That, of course, means the person entitled as between landlord and the tenant. . . ." (*h*).

Despite the vulnerability of the reasoning, however, the decision has forestalled an illogical distinction which before appeared to exist. If the word " landlord " had required the relationship of landlord and tenant to exist before section 73 (1) (iv), S. L. A., could apply, then the result would have been that the availability of capital money to effect improvements within the Third Schedule to the A. H. A. would have depended upon the accident of whether the property which was to benefit was let at the relevant time. In relation to a tenant for life's responsibilities under sections 10 and 11 of the Agriculture Act, 1947, in respect of maintaining fixed equipment, the question whether capital money would be available to discharge the costs incurred would itself have depended upon the question whether the property involved happened to be let or not. It is submitted that no such distinction was intended by the Legislature who, in altering the tenant for life's immunity from the consequences of failing to maintain agricultural property, presumably intended the financial burden of the statutory liabilities to be borne not by the tenant for life but by capital. In this connection, it is to be noted that paragraph 23 of the Third Schedule to the A. H. A. first appeared in the Third Schedule to the Agriculture Act, 1947, although it did not actually become operative until the A. H. A. came into force.

In the result, therefore, it would appear that capital money may be applied in discharging the cost of repairs to fixed equipment, subject only to two conditions :—

(1) The equipment must be reasonably required for the proper farming of the land. This condition is presumably automatically satisfied if the tenant for life is carrying out no

(*h*) More generally, Bramwell, B., in *Churchward* v. *Ford* (1857), 2 H. & N. 446, observed at p. 450: " The word ' landlord ' does not mean the lord of the soil, but the person between whom and the tenant the relation of landlord and tenant exists ".

more than his responsibilities under section 10 or 11 of the Agriculture Act, 1947.

(2) Where the land for which the fixed equipment is reasonably required is let, the tenant must *not* be under an obligation to carry out the particular repairs. The question of a tenant's liability for repairs depends upon the provisions of the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948, except in so far as any agreement *in writing* between the parties otherwise provides.

### Summary

In the result, it will be seen that the way in which the statutory obligations imposed upon owners of agricultural land militate against beneficiaries entitled under trusts of land is not unduly prejudicial to their immediate pockets. In so far as the payment of compensation for agricultural improvements is concerned, the burden must inevitably fall either directly or indirectly on income, although the position will normally be such that the increased income derived as a result of the improvements will roughly offset this liability.

The burden of compensation for disturbance must also fall upon income. In view of this, it is questionable to what extent trustees for sale ought to exercise their powers of terminating agricultural tenancies. But as far as tenants for life under the S. L. A. are concerned, this liability must perhaps be regarded as the foreseeable (and therefore theoretically avoidable) consequence of the notice to quit.

With regard to the duties of trustees for sale and S. L. A. estate owners under section 10 of the Agriculture Act, 1947, it appears that capital money can usually be resorted to to shoulder the cost of discharging such duties, since they would seem to be almost exclusively confined to the provision, improvement and maintenance of items of fixed equipment. A (presumably minor) exception occurs, however, in the case of things grown otherwise than for their fruits, or use or consumption after severance.

Further, where the land is occupied by the tenant for life, trustees or beneficiary under a trust for sale, then in so far as section 11 of the Agriculture Act, 1947, imposes a duty to maintain fixed equipment, capital money may again be tapped. But in so far as the occupier is required by section 11 to farm the land in accordance with the rules of good husbandry, income is liable. This involves the actual working of the land in a manner which satisfies the Minister. But theoretically at any rate, the value of the resulting produce will more than equal the cost of so working the land.

# SECTION 109 OF THE LAND REGISTRATION ACT, 1925: ITS SCOPE AND SANCTION

By F. W. Taylor, B.A., LL.B., Barrister-at-Law

*" But say, my lord, it were not register'd . . ."*.
(Ric. III)

Maitland somewhere speaks of tearing the web of history by telling a part of the story. With a like feeling the writer of this article ventures to discuss a single section of the Land Registration Act, 1925. Indeed, section 109 cannot be isolated. It represents one of three leading general provisions of the scheme as recast by the 1925 Act and Rules. The provisions call for observance of the scheduled Forms (*a*), the non-use of instruments other than the registered instrument (*b*), and, finally, the carrying-out of a transaction on the register where that is possible. This last provision is the gist of section 109. Section 109 and section 39, excluding the use of unregistered instruments, are new in the 1925 scheme. The three requirements together constitute a general principle of conformity. The requirement of following the Forms and the requirement that instruments other than the registered instrument be not used are straightforward and their " sanctions " are clear. The third requirement, that a registrable transaction shall be carried out on the register, is with regard to sanction not free from doubt and is the chief matter for discussion. The sections and Rules which prescribe these observances are not contiguously arranged in the formal sources of the scheme but they are strongly marked features and there is a close relationship between them. It is therefore desirable to state the substance of the first two requirements before considering section 109.

The application of the requirement that the scheduled Forms shall be followed (*c*) is familiar to every practitioner in the registration areas. The Forms are scheduled to the Rules and have to be used in all matters to which they refer, or are capable of being applied or adapted, with such alterations and additions as are necessary or desired and the registrar allows. Where no Form is

(*a*) R. 74.
(*b*) S. 39.
(*c*) R. 74. The body of the Act does not directly concern itself with formal contents, except to declare that subject to certain provisoes charges may be in any form (s. 25 (2)).

prescribed or a scheduled Form cannot conveniently be adapted the instrument is to be in such form as the registrar directs or allows, the scheduled Forms being followed as nearly as circumstances permit. In general, to comply with the official models the instrument must be short, and, with exceptions, must not refer to trusts or to extraneous documents. Where a Form is applicable, either directly or by adaptation, it is merely skeletal and great latitude is allowed in practice. Instruments of transfer come within the definition of a " conveyance " in the Law of Property Act, 1925, by force of the words " and every other assurance of property or of an interest therein by any instrument, except a will " (*d*). The need for a seal on the execution of an instrument of transfer does not arise from section 52 of that Act because of the rule that the legal estate can pass only upon completion by registration (*e*). Sealing is necessary because the Forms show the same requirement, and they have statutory force. There is no difficulty about sanction here. Appropriateness of contents is enforced by the registrar's power to refuse an inept instrument. He may reject an instrument which appears improper in form or substance (*f*). The delay may be serious because the application has to be made again (*g*). Registration can then date only from delivery of the new application (*h*).

The second requirement is that of the exclusiveness of the instrument of transfer. Where any transaction relating exclusively to registered land or to a registered charge is capable of being effected, and is effected by a registered disposition, then, subject to prescribed exceptions, any deed or instrument other than the registered disposition, which is executed by the proprietor for the purpose of giving effect to the transaction, shall be void, but only so far as the transaction is carried out by the registered disposition (*i*). The only prescribed exception is contained in Rule 96: where a transaction is of such a character as to make it necessary or useful that the registered disposition should be accompanied by an additional deed or instrument, the registrar may issue a certificate to that effect. The additional deed or instrument shall, then, if in accordance with the certificate, be an exception and shall not be made void by the section. The Rule instances accompaniment of the transaction by lengthy recitals or personal covenants not affecting the substance of the transaction in relation to the registered land or charge, or close involvement with other transactions, or the need that duplicates

(*d*) S. 205 (1) (ii).
(*e*) L. R. A., 1925, ss. 19, 20, 22, 23.
(*f*) R. 78.
(*g*) See Brickdale & Stewart-Wallace, 4th ed., p. 361.
(*h*) R. 83; r. 86.
(*i*) S. 39.

should be held by different persons. It is believed that resort to the registrar for his certificate is seldom necessary outside the specific occasions instanced. This is mainly owing to the latitude allowed in the modification of the official Forms. Presumably the certificate must be got before execution of the excepted instrument in order to save it. Again the sanction is clear. If the registrar does not give a certificate the instrument is void, but only so far as the transaction is carried out by the registered disposition. It follows that as certification is irrelevant in the absence of registration, associated deeds may be good by the mere fact of non-registration of the instrument of transfer.

Section 109 enacts that " Subject to the express provisions relating to leases (*k*) and mortgages (*l*), nothing in this Part (*m*) of this Act shall be construed as authorising any disposition of any estate, interest, or right or other dealing with land to be effected under this Part of this Act if the disposition or dealing is one which could be effected under another Part of this Act, and any such disposition or dealing shall be effected under and in the manner required by such other Part of this Act, and when so required shall be registered or protected as provided by this Act or the Rules ". The statutory heading of Part IX is " Unregistered Dealings with Registered Land ", and the co-extensive sub-heading is " Powers of dealing with Registered Land off the Register "(*n*). An " authorised " disposition or dealing means in this article one which " could be effected under another Part " of the Act, except where the context indicates authorisation under Part IX. Authorised dispositions signify dispositions by the proprietor as such and are equivalent to registered dispositions. The latter term is defined as " dispositions which take effect under the powers conferred on the proprietor by way of transfer, charge, lease or otherwise and to which (when required to be registered) special effect or priority is given by this Act on registration " (*o*). The qualification in brackets refers to overriding interests created by the proprietor.

Sections 18 and 21 which confer most of the ordinary powers define " disposition " in the Act as including any disposition authorised by those sections. Other sections which confer powers on the proprietor as such are sections 25, 31, 33, giving respectively powers of charging, altering charges, and transferring charges,

(*k*) S. 104.
(*l*) S. 106.
(*m*) *I.e.*, Part IX (ss. 101–109).
(*n*) Before 1926 a deed off the register was effective to pass the legal estate under s. 49 of the Land Transfer Act, 1875, although defeasible by later registered disposition for value: *Capital and Counties Bank* v. *Rhodes*, [1903] 1 Ch. 531.
(*o*) S. 3 (xxii).

section 34 setting out the powers of the proprietor of a charge and section 35 governing discharge. Section 40 enabling the creation of a restrictive covenant and section 66 enabling a lien by deposit of certificate are further instances of authorised dispositions. Although equitable they are effective as if the proprietor were beneficially entitled unless there is some appropriate entry on the register to prevent this. The estate for the time being vested in the proprietor is only capable of being disposed of or dealt with by him in manner authorised by the Act (*p*). Dispositions by operation of law (*q*) may be disregarded because here there can be no competition of methods since Part IX is concerned wholly with dispositions by act of the party.

Now before considering the field of conflict with Part IX some general remarks may be made concerning authorised dispositions. First, they include all the ordinary and obvious ways of dealing with land whether by way of transfer (on sale or voluntarily), lease, mortgage or charge. Secondly, in general, but with exceptions which include leases and charges by way of mortgage, statutory Forms are provided which must be followed. Thirdly, in nearly every instance it is a legal estate or legal interest which is conferred upon the grantee on registration. (The exceptions are the creation of a restrictive covenant and a lien by deposit of certificate.) Fourthly, although normally an authorised disposition is complete only by the registration of the grantee as proprietor of a registered estate or charge, *i.e.*, by " substantive " registration, there are some authorised dispositions which are completed by entry of a protective notice, namely, the lien by deposit and the creation of a restrictive covenant : and the grant of a lease not exceeding twenty-one years at a rent without fine is good as an overriding interest although no entry at all is made on the register. Fifthly, authorised dispositions are without exception independent of the character of the proprietor as being a beneficial owner or a fiduciary proprietor.

It is now necessary to outline the contents of Part IX of which section 109 is the final section. Section 101 is the leading section and it is set out in full below. Section 102 is concerned merely with the priorities of certain minor interests; section 103 with the obligation to give effect on the register to minor interests capable of taking effect as legal estates; section 105 with minor interests in a mortgage-debt. Section 104 enables the grant of leases under statutory powers in the name of the proprietor. Section 106 enables a mortgage in ordinary form protected by mortgage caution, or if not by deed by ordinary caution. It is included in Part IX because

(*p*) S. 69 (4).
(*q*) See s. 37 and Rule 81; ss. 41–43.

until such entry it is dependent on the proprietor's having a beneficial title. Section 107 is concerned with contracts—in effect it makes the power to contract so as to bind the land a power of the proprietor as such. The reason why it is included in Part IX is presumably that a contract is not a disposition. The section also empowers the proprietor to enforce a predecessor's contract which benefits the land. Section 108 allows acquisition of easements and other benefits—it has to do only with acquisition. It is submitted that, having regard to the content of Part IX, section 109 could hardly apply outside the ambit of section 101, and that section 109 would perhaps be clearer if it omitted reference to leases and mortgages and said "nothing in section 101" instead of "nothing in this Part", etc.

Section 101 (1) reads: "Any person, whether being the proprietor or not, having a sufficient interest or power in or over registered land, may dispose of or deal with the same, and create any interests or rights therein which are permissible (*r*) in like manner and by the like modes of assurance (*s*) in all respects as if the land were not registered, but subject as provided by this section". By subsection (2) all interests and rights disposed of or created under subsection (1) take effect as minor interests, and are capable of being overridden by registered dispositions for valuable consideration. Subsection (3) enables their protection by entry on the register of notices, cautions, inhibitions or restrictions. For the purposes of the present discussion nothing need be said of the three remaining subsections. Part IX is not of the essence of the Act. Had section 101 not been enacted the bulk of the contents of the section could have been deduced. A similar remark might be made of the Part.

What then, disregarding the element of sanction, is the scope of section 109, its field of application? There can be no question of a dealing in reliance on Part IX (with the exception of section 104 as to leases and section 106 as to mortgages) unless the grantor is a beneficial owner. A disposition by a proprietor who is not a beneficial owner is either a disposition controlled by and effective under some other part of the Act, or it is nothing. A grantor who is not a proprietor or a person on whom the right to be registered has devolved by reason of the proprietor's death, or has been conferred by a disposition or charge, in accordance with the Act (*t*), has only a beneficial title of which to dispose. For him, untrammelled by

(*r*) This may mean "known to law": Brickdale & Stewart-Wallace, 4th ed., p. 244, suggests "recognised by law as capable of existing as minor interests".
(*s*) See Law of Property Act, 1925, ss. 51–53.
(*t*) See s. 37 and r. 81.

section 109, the freedoms of Part IX lie wide open. He has no alternative. It is the proprietor who is also beneficial owner against whom the section is aimed. In respect of dispositions falling within the section he is not to rest on the equitable side of his dual ownership. Brickdale & Stewart-Wallace comments that " the general intention of the section [109] appears to be to ensure as far as possible the direct registration of all rights and liabilities which are registrable. . . . To give examples, a conveyance of the fee simple or grant of a rentcharge or a restrictive covenant, being dealings which can be effected by registered disposition under sections 18 or 40 of the Act, would be ' unauthorised ' if attempted by deed off the register. On the other hand, a grant of a life interest or of a reversion, which cannot be effected under any other part of the Act, would be ' authorised ' and would have the benefit of this part " (*u*). Again, if a proprietor declares himself a trustee the declaration of trust cannot come within section 109. If it is sought to vest the proprietor's interest in trustees this must be done by an instrument of transfer. A grant of the proprietor's whole interest whether by way of sale or direct gift falls within section 109. The rule may be stated simply in this way: section 109 comes into play only in the field of dealings by a proprietor who is a beneficial owner, where, had the dealing been by a fiduciary proprietor, it would in order to be effective have to be completed on the register either directly or by protective entry.

Because the enabling section 101 allows dealings " which are permissible in like manner and by the like modes of assurance in all respects as if the land were not registered ", it might be thought that section 109, conceived of as a limiting or disabling section, has nothing to do with neglect to apply for registration of an instrument of transfer in the official form. This, however, equally offends against the policy of section 109, the concluding words of which are " . . . and any such disposition . . . shall be effected under and in the manner required by such other Part . . . and when so required shall be registered or protected as provided by this Act or the Rules ". For reasons which will presently be stated, such neglect on the occasion of an authorised disposition by a beneficial owner may have less serious consequences than those which may follow the choice of an ordinary conveyance where an instrument of transfer in official form is the appropriate method.

The field of application of section 109 having been considered, the problem which now arises is—what are the consequences of non-compliance with the section? Brickdale & Stewart-Wallace

(*u*) 4th ed., p. 255.

remarks: "It is not stated what the effect of a purported but unauthorised disposition is to be. Presumably it would operate as a contract, but would be, of course, dependent for its validity on the proprietor's beneficial title" (*a*). This statement seems to imply that the offending disposition is operative as a contract but only as a contract. It has already been shown that the existence of a beneficial interest in the grantor is the *sine qua non* of a valid disposition under Part IX (with limited exceptions under section 104 and section 106 as to leases and mortgages respectively): and that the highest operation possible for a disposition dependent on section 101 is an equitable operation. If the disposition is to be regarded as valid merely as a contract this can be so on principle only where made for value (*b*). Equity treats a void conveyance as a good contract only where there is valuable consideration even if by deed. It is respectfully submitted that section 109 does not annul the dealings which are obnoxious to it and that they have more than a merely contractual operation (*c*), with this proviso—that there must be no want of complete constitution in the cases of a voluntary trust or direct gift. The words used in section 109 are "nothing in this Part of this Act . . . shall be construed as authorising . . . ", etc. One of the meanings of "authorise" is "to give formal approval to" (*d*), and it is submitted that this is the meaning connoted in the present context. Indeed the sledge-hammer of nullity is not necessary to carry out the policy to which the section gives expression. Primarily the section is declaratory and directory like a number of sections in the 1925 legislation (*e*), not armed with a sanction of its own, and exhorting the use of the register where registration is possible. One object is that legal estates shall be got in (*f*). There are sufficient sanctions outside the section to ensure that the occasions will be few when a registrable disposition will not be carried out *via* the register. In brief, if a minor interest would have been created had section 109 not been enacted, a minor interest is still created despite section 109.

Probably, too, it is submitted, the section is intended expressly to preserve the rules governing the complete constitution of trusts

(*a*) 4th ed., p. 243.

(*b*) Or if statute makes it operate as an agreement for value: see Settled Land Act, 1925, s. 27 (1) (attempted conveyance of a legal estate to an infant for his benefit): see Potter's Registered Land Conveyancing, pp. 292, 293.

(*c*) Cf. the Companies Act, 1948, s. 73, declaring that shares shall be transferable in manner provided by the articles. It was held in *Hawks* v. *McArthur*, [1951] 1 T. L. R. 308, that transfers for value ignoring the articles and not registered were not nullities. The transferor had lost his beneficial interest and the transferees had equitable rights.

(*d*) Shorter Oxford Dictionary, p. 125.

(*e*) *E.g.*, Law of Property Act, s. 7 (4), Trustee Act, s. 35 (1).

(*f*) Cf. Law of Property Act, s. 42 (3), (4).

and direct gifts. If a valid and enforceable interest has been got by a transaction off the register effect may be given to it at any time under section 103. The substance of this section is that if the minor interest would if registered be capable of taking effect as a legal estate, and the estate owner would have been bound to give effect to it by creating a legal estate had the land not been registered, he must give legal effect to the transaction by a registered disposition. Where the disposition is for value, non-compliance with section 109, although dangerous, is not of vital importance, for there cannot then be any doubt about the existence of an enforceable obligation to which effect can be given by registration either substantively or protectively. Where a disposition is by ordinary deed off the register and is voluntary the rules governing the perfection of trusts and gifts will have to be applied. The principle is well established that the donor must either declare himself a trustee or vest the property in trustees or transfer it directly to the object of his bounty (*g*). A legal owner who does not expressly or by implication declare himself a trustee must do what is necessary to enable the legal estate to pass (*h*). It follows that if the proprietor has not declared himself a trustee his gift will fail if he has merely executed an ordinary deed off the register. For he has not taken the very first step necessary to enable the registrar to denude him of the legal estate, namely, the execution of an instrument of transfer in the proper form. The case is the same whether the attempted donation be by way of trust or directly to the volunteer. But suppose a voluntary disposition is carried out by the execution of a proper instrument of transfer in the official form, and it is not sent in for registration and the donor dies. Here there is no imperfection in the trust or gift because the donor, if he has also handed over the certificate, has done all that in him lay to enable himself to be deprived of the legal estate by the registrar (*i*). Should there be on the register a restriction requiring something to be done by the donor before registration of a dealing then, of course, the benefaction would not be perfected until he has done what was required (*k*).

There are further "sanctions" inherent in the registered land system which afflict all dealings dependent on Part IX, irrespective of their nature as being voluntary or for value. Not being registered only a minor interest is acquired, which needs to be protected on the register either to prevent a further dealing or to make the interest effective against a purchaser who becomes proprietor.

(*g*) *Milroy* v. *Lord* (1862), 31 L. J. Ch. 798.
(*h*) *Richards* v. *Delbridge* (1874), L. R. 18 Eq. 11.
(*i*) Cf. *Re Rose*, [1949] Ch. 78.
(*k*) Cf. *Re Fry*, [1946] Ch. 312.

Further, even if protected on the register it lacks the statutory guarantee of title. Finally, it is dependent on the grantor having the beneficial interest when the grant is made. These incidents are powerful inducements to exploit registration to the full and their existence makes unnecessary the implication of a sting in the tail of Part IX. An attitude of contumacy towards the register would be eccentric today although perhaps characteristic of the evasions of an earlier age—

"Thy registers and thee I both defy."

But informal benefactions, accident, mistake of fact or law, and neglectfulness may easily lead to situations where it would become necessary to rely on Part IX and to consider the precise meaning of section 109.

# NOTES OF RECENT CASES

## 1. *LAW OF PROPERTY AND CONVEYANCING*

By S. M. Tolson, Barrister-at-Law

*Tenancy by estoppel—tenancy agreement made prior to purchase and mortgage.*—Harman, J.'s decision in *Coventry, etc., Building Society* v. *Jones,* [1951] 1 All E. R. 901 (see note *ante,* p. 184), has been distinguished by Danckwerts, J., in *Woolwich, etc., Building Society* v. *Marshall,* [1951] 2 All E. R. 769, and distinguished on the facts by the Court of Appeal in *Universal, etc., Building Society* v. *Cooke,* [1951] 2 All E. R. 893.

The question in all three cases was whether a tenant had acquired a valid tenancy of a flat by estoppel, when he had gone into possession under an agreement with the landlord, before the building of which the flat formed part had in fact been conveyed to the landlord, and where immediately after completion the landlord, without disclosing the existence of the tenancy, granted a mortgage of the whole building which excluded the statutory power of leasing. Clearly, if a legal tenancy could not be inserted between the sale and the mortgage by operation of the doctrine of estoppel, the tenant would have no protection under the Rent Restrictions Acts (*Dudley and District Benefit Building Society* v. *Emerson,* [1949] Ch. 707).

In the *Coventry Case* (*supra*), Harman, J., treated the purchase and mortgage as one transaction, which indeed they so often are, the mortgagee being present at completion with the money which he exchanges for the deeds. In this case the building society knew that the mortgagor was unable to complete without their assistance, and the learned Judge held that there was no *scintilla temporis* between the purchase and the mortgage sufficient to feed the tenant's tenancy.

In the *Universal Case* (*supra*), the Court of Appeal reversed a decision of Romer, J., who had applied the *Coventry Case,* on the ground that the purchase and conveyance were there dated on successive days and there was no evidence that they were part of one transaction. In the absence of contrary evidence, the deeds were delivered and operated on the date of execution and there was therefore a time within which the tenant's rights were perfected by estoppel.

The *Woolwich Case* was not apparently referred to by the Court of Appeal in the *Universal Case,* but in it Danckwerts, J., proceeded upon a rather different principle. Both deeds were executed on the same day, but there was no evidence that the advance was vital to completion (except perhaps by virtue of its proportion to the total purchase price). The learned Judge held that as the mortgage deed recited that the mortgagor was beneficial owner, the mortgagee could

not object if it was taken to be true, and it must therefore be presumed that some interval of time had elapsed between the purchase and the mortgage sufficient to vest a legal tenancy in the tenant. The learned Judge said that he could not discover what recitals there were in the mortgage in the *Coventry Case*, and in view of this difficulty and of the doubt he felt concerning that case, he felt justified in not following it.

It seems clear that some conflict arises between the two earlier cases, and the learned Master of the Rolls in the *Universal Case* expressly did not give an opinion upon the correctness of the decision in the *Coventry Case*. The recital that the mortgagor is the beneficial owner of the property mortgaged, is, one may say, common form, and so also it may be said that it is common practice for the mortgagee to attend the completion of the purchase in a very large percentage of cases. If the *Woolwich Case* contains the correct principle and the recitals govern the matter, then it would seem to leave but few cases where the position is uncertain. On the other hand, it seems fairer that the true nature of this type of mortgage should be recognised as in the *Coventry Case*, and such recognition seems to have been the main purport of Harman, J.'s judgment, even though (as appears from the report of the *Universal Case*) the two deeds were expressly treated as one transaction for the sake of argument. However, it might well be a difficult matter to determine the limits of such a principle were it to be established. From the moral point of view also it would seem, with respect, preferable that the tenant should not have a valid tenancy as against the mortgagee, as he claims through a landlord who has broken faith, whether he, the tenant, knows of such breach of faith or not.

It is interesting to notice that in the *Woolwich Case* the land was registered and the tenant's possession was an overriding interest (Land Registration Act, 1925, s. 70 (1) (*g*), rights of persons in actual occupation), which, in the absence of other reasons to the contrary, was binding on the building society. In the *Coventry Case*, on the other hand, where the title was unregistered, in order for the tenant's interest to bind the building society in the same way, it would have had to be registered as an estate contract under the Land Charges Act, 1925, s. 10 (1), Class C (iv), and as Jenkins, L.J., pointed out in the *Universal Case*, even an oral contract must be so registered. (Land Charges Act, 1925, s. 10 (3).)

*Editor's Note.*—See Mr. Graham's article, *ante*, p. 381.

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*Assignment of lease—sub-tenancies let in excess of standard rents.*—In *Schlisselman* v. *Rubin*, [1951] W. N. 530, Slade, J., in construing the assignment of a lease adopted the words of Farwell, J., in *Terrene, Ltd.* v. *Nelson* (1937), 53 T. L. R. 963, at pp. 965 and 966, and refused to imply from the words "are let" a warranty that the rents of sub-tenancies specified in the assignment were lawfully recoverable under the Rent Restrictions Acts.

Also, applying the words of Lord Wright in *Luxor (Eastbourne), Ltd.* v. *Cooper*, [1941] A. C. 108, at p. 137, he was unable to imply a

term that the rents specified were recoverable rents, as it was not necessary to do so to give efficacy to the terms of the contract and the intention of the parties.

Therefore the assignee, the plaintiff, was unable to recover from the assignor, the defendant, excess rent which the plaintiff had had to repay to one of the sub-tenants.

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*Attorney administrator—appointment of trustees of infant's share —trustees power to maintain—Administration of Estates Act,* 1925, *s.* 42 (1); *Trustee Act,* 1925, *s.* 31.—K., who had a foreign domicile, died abroad intestate leaving personal estate in England, and was survived by his wife and one infant son. Under the law of K.'s country of domicile, the infant was entitled to a share in his estate. Letters of administration were obtained in England by M. and another as attorneys.

Danckwerts, J., decided in *Re Kehr,* [1951] 2 All E. R. 812, that attorney administrators have power to appoint trustees under section 42 (1) of the Administration of Estates Act, 1925, and so obtain a discharge from further liability in respect of a legacy to which an infant beneficiary is entitled. The learned Judge relied upon the opinion of Farwell, J., in *Re Wilks,* [1935] Ch. 645, at p. 650, that section 42 (1) would be a curious provision did it not contemplate the intestacy of a person dying abroad, for, since 1925 no infant "is absolutely entitled . . . on the intestacy of a person" domiciled in this country.

While doubting what would be the position of trustees constituted by the law of a foreign country, he also decided that such trustees as were appointed under section 42 (1) would have the powers of maintenance conferred by section 31 of the Trustee Act, 1925. "It seems to me that trustees constituted under that subsection hold on trust for beneficiaries who are to be found according to the provisions of some foreign law, but that their powers and constitution depend upon the provisions of English law."

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## 2. *CHARITIES*

By A. Kiralfy, Barrister-at-Law

*Church as charity.—Re Gare,* [1951] 2 All E. R. 863. A gift to a church "*eo nomine*" is necessarily a gift for religious purposes. Harman, J., held that it must be meant for the expenses of the services of the church. There must be no application of such a bequest to parochial objects of a non-religious nature. A scheme would have to be drawn up for the administration of the fund unless the church council and the Attorney-General came to some arrangement. It is noteworthy that the only authority for the decision was

an old case of unknown date, *Re St. Andrew's, Holborn,* cited in 1 Atk. 437; 26 Eng. Rep. 280, but the principle appears clear enough.

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*Inflation—capital sum left to establish charity—impracticability —cy-près doctrine.—Re Whittaker,* [1951] W. N. 549. Reference has been made in a previous issue to the problem of inadequate bequests to set up new charitable institutions (15 *Conveyancer* 188). There is likely to be an increasing number of these cases reported. In the instant case a testator left one half of his residuary estate to a charity, and the other half (£9,000) to establish a cottage hospital, another charity. The testator died in 1914. At that time it would have been possible to build such a hospital for that sum. But this expenditure was postponed by the will until the expiration of life interests which had now come to an end. The cost of carrying out the testator's intentions would now be about £40,000. There were also two existing general hospitals quite adequate for the needs of the town where this new hospital was to be erected. It was held that there was a general charitable intention shown, and that the £9,000 should be applied *cy-près.* No doubt the two other local hospitals had improved considerably since the testator executed his will, so that this decision appears in harmony with his probable wishes. The cost of building appears to have grown far more than the appreciation of the testator's estate. It does not seem possible to anticipate inflation by any special provision in a will of this kind. Draftsmen of future wills might, however, bear in mind the difficulty of the individual attempting to compete with the State in this sphere, particularly where the increased demands of the revenue, which lead to the depreciation of private fortunes, are based on the increase in State responsibility for charitable work.

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## 3. *WILLS*

By A. KIRALFY, Barrister-at-Law

*Wills—satisfaction of covenant in settlement by annuity in will.— Re Haves,* [1951] W. N. 550. In 1944 a husband covenanted to pay his wife £3 per week and this was secured on certain rentcharges. He died, leaving his wife £3 per week for life. Harman, J., held that the presumption of satisfaction applied. There was no direction to pay debts and the testamentary annuity was charged on the testator's estate, including the rentcharges, so that it was equally well secured. *Re Manners,* [1949] Ch. 613 (13 *Conveyancer* 382) was distinguished.

(Theobald 543.)

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*Successive residuary gifts—interpretation.—Re Gare,* [1951] 2 All E. R. 863. In this case a gift of residue was made to X and Y, followed by a gift of residue " not hereby otherwise disposed of " to Z. It was held that the gift to X and Y took effect, both X and Y surviving the testator. Harman, J., held that the gift to Z must have been meant to take effect in case some share of residue under the gift to X and Y lapsed, and that there was no real inconsistency. Z was not entitled to claim, simply because the gift to him was later than the gift to X and Y, under the rules about inconsistency. " Disposed of " was read by the learned Judge as " effectively disposed of ", not as simply " referred to ".

The interpretation of the cases in Theobald (10th ed.) 532, was criticised. The present case is important as there is no other authority precisely in point.

(Theobald 178, 532.)

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*Will — construction — " relations " — date of identification.—Re Gansloser,* [1951] W. N. 516 (C. A.). The Court of Appeal have affirmed on all points the decision of Vaisey, J. (15 *Conveyancer* 276).

(Theobald 246–247.)

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## 4. *PLANNING CASES*

By T. A. Blanco White, Barrister-at-Law

*D'Alessio* v. *Enfield R. D. C.,* [1951] 2 T. L. R. 859; [1951] 1 All E. R. 754, illustrates the way in which enforcement of planning control may be blocked by purely technical objections. Since this case, like so many others, turns upon the transitional provisions of the Town and Country Planning Act, 1947, and since these provisions are rapidly losing their importance, full discussion of the facts is unnecessary. In short, the local planning authority served an enforcement notice under " sections 23 and 75 " of the Act. Strictly, while there was little doubt that they had power to serve the notice, it was under section 23 (as applied by section 76) and not under sections 23 and 75. The notice was held bad. (See also (1951), 2 P. & C. R. 166.)

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*Buckinghamshire County Council* v. *Callingham,* [1951] 2 All E. R. 822, illustrates the pervasive nature of planning control. It decides two points: first, that even model houses are " buildings " and their construction consequently is development for purposes of planning control; and secondly, that the power to clear away old contravening development extends (or rather extended; the time for enforcement has now expired) to building operations going back

beyond 1933. Since, however, the Ministry took the contrary view upon this last point, and most local planning authorities seem to have accepted the Ministry's opinion (implausible as it always seemed upon the wording of the 1947 Act), most pre-1933 development of this sort has probably remained safe from interference.

The very large proportion of planning cases that turn upon the transitional provisions of the 1947 Act is worthy of note; for it gives reason to hope that if and when planning law gets a chance to settle down, the amount of litigation it gives rise to may be reasonably small. (See also (1951), 2 P. & C. R. 173.)

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## 5. *LANDLORD AND TENANT CASES*

By J. Muir Watt, M.A., of the Inner Temple, Barrister-at-Law

*Rent Restrictions Acts—part of premises sub-let by widow entitled under section* 12 (1) (*g*) *of* 1920 *Act—"determination of interest"—sub-tenant protected.—Lewis* v. *Reeves,* [1951] 2 All E. R. 855, rejects the view taken by some county court judges, exemplified in *Guillan* v. *Sargent,* [1939] L. J. N. C. C. R. 271, that the provisions of section 15 (3) of the 1920 Act for the protection of lawful sub-tenants do not apply where a transmitted statutory tenancy under section 12 (1) (*g*) of the 1920 Act expires on the death of the tenant. The grounds alleged for not applying them were (a) that when a transmitted statutory tenancy comes to an end on death it cannot be said that it "is determined" (although it clearly "determines") within the meaning of section 15 (3), and (b) that a person entitled under section 12 (1) (*g*) to a transmitted statutory tenancy is not a statutory tenant in the ordinary sense, and, therefore (although this does not necessarily follow), the provisions for the protection of sub-tenants do not apply on the determination of such a tenancy. The Court of Appeal has rejected both grounds, and held that the provisions do apply. It is perhaps odd that, say, a widow's sub-tenant is protected although, under the rule that there can only be one transmission by virtue of section 12 (1) (*g*), her daughter as such would not be. Denning, L.J., pointed the obvious moral, which conveyancers will please note:—I expect that, as a result of this case, lawyers will advise daughters how to get protection by taking a sub-tenancy. It is simple enough".

(Rent Restrictions Guide, 3rd ed., p. 102.)

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*Rent Restrictions Acts—terms of statutory tenancy—rent.*—It has already been made clear in a number of cases that the terms of a contractual tenancy which relate to rent are not carried over under section 15 (1) of the 1920 Act into the statutory tenancy. For example, a provision for reduction on prompt payment has been held,

in *Regional Properties, Ltd.* v. *Oxley,* [1945] A. C. 347, not to be carried over. *Dean* v. *Bruce,* [1951] 2 All E. R. 926, reinforces this principle. In that case premises had been let under a contractual tenancy at £36 8s. a year, this being stated in the rent book to be the standard rent. The landlord discovered that the true standard rent was £60 and gave notice terminating the contractual tenancy. He then demanded rent at the rate of £60 per annum. The tenant claimed to remain in possession as a statutory tenant at the old rent. The Court of Appeal rejected this claim. Terms as to rent are not carried over under section 15 (1) as they would be inconsistent with the scheme of the Acts regulating the rent payable by a statutory tenant. The Court also rejected an argument for the tenant based on estoppel.

(Rent Restrictions Guide, 3rd ed., pp. 104–106.)

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*Rent control—rent tribunal—security of tenure—reference to tribunal after notice to quit—section 5 of* 1946 *Act and section* 11 *of* 1949 *Act.*—The Divisional Court in *R.* v. *Folkestone and Area Rent Tribunal, ex p. Starkey,* [1951] 2 All E. R. 921, has given its ruling on the unsettled question, much canvassed by legal authors and the subject of differing opinions by tribunals themselves, whether an application can be made under section 11 (1) of the Landlord and Tenant (Rent Control) Act, 1949, for security of tenure in a case where the landlord has served a notice to quit *before* a reference to the tribunal under the 1946 Act. The Court has now held that an application can only be made under section 11 (1) of the 1949 Act where the reference has been made before the notice to quit. In other words the Court has regarded section 11 (1) as merely extending the provisions of section 5 of the 1946 Act and not as creating a new power exercisable in different circumstances. The Court laid stress on section 11 (5), which directed that section 11 should be construed as one with the 1946 Act and on the opening words of section 11 (1) itself. Lord Goddard, C.J., and Hilbery, J., had no doubts about this construction, but Pilcher, J., although not prepared to dissent, had considerable difficulty in accepting it. It is to be noted that the Divisional Court's decision is contrary to the view assumed by the Court of Appeal in *Francis Jackson Developments, Ltd.* v. *Hall,* [1951] 2 All E. R. 74, but the point was not there discussed as an issue.

(Rent Restrictions Guide, 3rd ed., pp. 98–99.)

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*Agricultural Holdings Act,* 1948 — *irregularity by Agricultural Land Tribunal—issue of "amended decision notice"—certiorari ordered.*—The Divisional Court in *R.* v. *Agricultural Land Tribunal (South Eastern Area), ex p. Hooker,* [1951] 2 All E. R. 801, have checked an irregularity on the part of an Agricultural Land Tribunal. There is no appeal from the decisions of these tribunals, but the corrective jurisdiction of the High Court, by means of *certiorari,* has

once again shown its capacity to keep inferior Courts and tribunals from committing errors and irregularities with impunity. Actually in the present case the tribunal were endeavouring to put right a mistake in the certified record of their decision. The decision, as certified by the chairman, had by mistake provided that the whole of certain orchards should be included in a lease. The tribunal had intended that about half of these orchards should be so included. Some two months afterwards the tribunal tried to rectify this mistake by issuing, under the certificate of the chairman, an " amended decision notice ", reducing the amount of orchards to half. The Court held that the tribunal has no jurisdiction to issue the amended notice. The certificate of the tribunal's decision which was originally issued was, as a result of art. 15 (2) of the Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948, conclusive evidence of the decision, and there was no power to alter it by a later certificate. An order for *certiorari* was made. The tribunal's irregular actions in this case were understandable, but the control exercised by the Court is a valuable safeguard against abuse, which must not be allowed to languish.

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## 6. *FAMILY LAW CASES*

By C. E. P. DAVIES, M.A., B.C.L., of the Inner Temple, Barrister-at-Law

*Nullity—nonage—extraterritorial effect of Age of Marriage Act,* 1929 (*now Marriage Act,* 1949, *s.* 2)*—application of lex domicilii.—Pugh* v. *Pugh,* [1951] P. 482, was an unusual case of a wife's petition for nullity on the ground of her nonage at the time of marriage. The parties were married in Austria in 1946 while the husband was serving there in the army. They lived together in Austria and Germany for about four years and then came to England where they had always intended to settle permanently. At the time of the marriage the wife was fifteen. Her domicile of origin was Hungarian, and by Hungarian law the marriage would have been invalid if the wife had repudiated it within a year of attaining sixteen, but as she did not do this it was valid. By Austrian law the marriage was valid. The Age of Marriage Act, 1929 (now the Marriage Act, 1949, s. 2) provides that a marriage solemnised between persons either of whom is under sixteen shall be void, but nothing is said in the statute about extraterritorial effect. The wife's case was put first upon the ground that the Act should be given extraterritorial effect by interpretation to include marriage of a British subject with an English domicile wherever solemnised if one of the parties was under age, and in support of this *Brook* v. *Brook* (1861), 9 H. L. Cas. 193 and *Mette* v. *Mette* (1859), 1 Sw. & Tr. 416, were referred to, which decided that the Marriage Act, 1835, providing that marriages between persons within the prohibited degrees should be void, applied to marriages solemnised in Denmark and Germany respectively where one at least

of the parties was domiciled in England. This view was accepted by the Court, partly for the reason given, and also after applying the well-worn rule in *Heydon's Case* (1584), 3 Co. Rep. 7a, that the Court should so interpret a statute as to suppress the mischief and advance the remedy. It is doubtful, however, whether this rule was ever intended to operate in such a case as this to give an English statute effect outside the territorial limits of this country. Alternatively it was argued that the wife was entitled to a decree because the defect alleged related to essential and not merely formal validity of the marriage which should be determined in accordance with the law of the domicile and this also was accepted by the Court. But it is not clear from the judgment whether the domiciliary law applied as the test for validity was the law of the husband's domicile or of the matrimonial domicile, which on the facts of the present case were both English.

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*Divorce—respondent incurably of unsound mind and continuously under care and treatment—removal between England and Scotland.—Frank* v. *Frank,* [1951] P. 430. A husband petitioned for divorce on the ground of his wife's incurable unsoundness of mind and continuous subjection to care and treatment for the previous five years. A reception order had been made against her in 1945 and since that date she had been undergoing treatment in mental hospitals in England and Scotland, but, owing to the operation of different systems of mental deficiency law in England and Scotland, short intervals in the continuity of her care and treatment had necessarily occurred when she was transferred from England to Scotland in 1946 and back again to England in 1948. Hitherto decisions on the interpretation of "continuously under care and treatment" in the Matrimonial Causes Act, 1937, s. 2 (now the Matrimonial Causes Act, 1950, s. 1 (1) (*d*)), particularly *Murray* v. *Murray,* [1941] P. 1, have tended to require strict compliance with the Mental Deficiency Acts, and accordingly in the present case the Divorce Commissioner considered that the intervals caused by the wife's journeys between England and Scotland were fatal to the petition. But the Court of Appeal took a more liberal view and, influenced to some extent by the amendment made by the Law Reform (Miscellaneous Provisions) Act, 1949, s. 3 (now the Matrimonial Causes Act, 1950, s. 1 (2)), showing that detention for the purposes of the Act could be in England or in Scotland, considered that it was clearly the intention of Parliament that the period of five years' continuous care and treatment should not be broken merely by the necessary transfer of a patient in hospital from England to Scotland and back again to England.

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*Divorce — privileged communication — discussion in counsel's chambers with a view to effecting reconciliation.—Pool* v. *Pool,* [1951] P. 470. Once again the decision in *Bostock* v. *Bostock,* [1950] P. 154 (see *The Conveyancer,* Vol. 14, p. 82, March, 1950), has not been followed. In the present case, while a wife's petition for divorce

was pending, meetings took place in her counsel's chambers with the object of effecting reconciliation between the parties. The meetings were attended by counsel and solicitors on both sides, and by the husband, but the wife was not present. The conversations taking place were not expressly stipulated to be " without prejudice ". The issue of admissibility of what took place at these meetings was argued before Havers, J., as a preliminary point. It was contended against admissibility that in the previous cases of *McTaggart* v. *McTaggart,* [1949] P. 94 and *Mole* v. *Mole,* [1951] P. 21 (see *The Conveyancer,* Vol. 14, p. 324, Sept., 1950), where privilege had been upheld, a probation officer was concerned in the negotiations which established the fact that reconciliation was the purpose sought, whereas the present case resembled *Bostock* v. *Bostock,* where no probation officer was present, but only the parties and their solicitors. But the Judge decided on the facts that there was sufficient evidence that the meetings in chambers were for the purpose of attempting reconciliation and from this followed the inference of a tacit understanding that the conversations should be " without prejudice ".

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*Maintenance—Matrimonial Causes Act,* 1950, *s.* 23—*departure of wife from matrimonial home—petitions by husband and wife for divorce on ground of cruelty dismissed—offer by wife to resume cohabitation without expressing repentence—whether bona fide.*—In *Price* v. *Price,* [1951] P. 413, the Court of Appeal affirmed the decision in *Price* v. *Price,* [1951] 1 All E. R. 877 (noted in *The Conveyancer,* Vol. 15, p. 202.

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*Maintenance—application by husband for revocation of wife's separation order on ground of her adultery—husband's own adultery conducing to that of wife.—Read* v. *Read,* [1951] W. N. 570. A wife obtained a separation order on the ground of her husband's adultery. Later the husband applied to the justices for revocation of the order on account of the wife's subsequent adultery. She admitted adultery, but alleged " conduct conducing " on the part of her husband in that if he had not been unfaithful to her the adultery need not have occurred. The justices dismissed the husband's application and he appealed. The Summary Jurisdiction (Married Women) Act, 1895, s. 6 (which deals with applications for orders) provides that a married woman who has committed adultery shall not be entitled to an order unless her husband has condoned or connived at the adultery, or has by his wilful neglect or misconduct conduced to it. Thus, while " conduct conducing " is only a discretionary bar to a petition for divorce it may be an absolute answer by a wife applying for an order if her husband's defence is that she has herself committed adultery. But this principle applies only to a wife's application for an order, and in section 7 (dealing with variation or discharge of orders) there is no such general proviso but only a limited one added by the Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 2 (1), that

the discharge of an order on the ground of the wife's adultery may be refused if in the opinion of the Court the husband has conduced to her adultery by failing to maintain such payments under the order as he was able to make. It was submitted to the Divisional Court, first that the general proviso regarding " conduct conducing " in section 6 should be read into section 7, but the Court was precluded from accepting this by *Ruther* v. *Ruther,* [1903] 2 K. B. 270, where precisely the same argument had been rejected. The other argument used was that the general principles of matrimonial law should be applied, including the effect of " conduct conducing ". Upon this point, the Court expressly reserved consideration of the question whether connivance or any other absolute bar under the general law would deprive the husband of his remedy, but considered that his own adultery could not have that effect. One of the reasons given was that otherwise a wife who had obtained an order on the ground of her husband's adultery might subsequently use that very act of adultery as a defence to a later application by her husband for revocation of the order on account of her subsequent adultery; but this could be avoided by limiting the husband's " conduct conducing " to acts occurring after the date of the order. The decision has emphasised the anomaly that any form of " conduct conducing " by a husband may neutralise his wife's adultery and enable her to claim an order against him, but the only form of " conduct conducing " which may deprive a husband of his right to have the order revoked on the ground of his wife's subsequent adultery is default in maintaining payments under the order which the Court considers he was able to make.

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## 7. *REVENUE CASES*

By Desmond Miller, of the Inner Temple, Barrister-at-Law

*Note*:—Where a case is not reported in any of the general series of law reports it is cited from the *Annotated Tax Cases* (A. T. C.) or *Taxation Reports* (T. R.).

### (a) Income Tax

*Moray Estate Development Company* v. *C. I. R.*, [1951] T. R. 301 (C. S.).

(1) *Statutory provisions*: No. I and No. III of Schedule A, the Income Tax Act, 1918.

(2) *Point*: The taking of gravel from land is a normal user of that land, but if the gravel pit is made the subject of a separate occupation, *e.g.*, by lease, then it is separately assessable (under Schedule A) and *ex hypothesi* not covered by the assessment under Schedule A made upon the area of land in which the pit is situate. *Russell* v. *Scott,* 30 T. C. 394, considered.

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*Craigenlow Quarries, Ltd.* v. *C. I. R.*, [1951] T. R. 307 (C. S.).

(1) *Statutory provisions*: No. III of Schedule A, Rule 3 (*m*) of the Rules applicable to Cases I and II of Schedule D, the Income Tax Act, 1918; section 21, the Finance Act, 1934.

(2) *Point*: On the facts the Court upheld the Commissioners' determination that money paid to a land-owner as consideration for the removal of granite from spoil banks was rent within the meaning of section 21 of the Finance Act, 1934, and therefore not admissible as a deduction in computing the Case I liability of the payer.

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*Nash* v. *Tamplin & Sons Brewery Brighton, Ltd.*, [1951] 2 All E. R. 869 (H. L.).

(1) *Statutory provisions*: Rule 3 (*a*) of the Rules applicable to Cases I and II of Schedule D, the Income Tax Act, 1918; section 17 (2), the Finance Act, 1940.

(2) *Point*: The "Usher deduction" permissible in computing the profits of brewers is a notional figure of rent forgone equal to the difference between the rents which could have been obtained from the lease of licensed houses free from a "tie clause" and the rents in fact obtained from "tied" tenants. This notional figure is not a rent payable under a long lease, within section 17 (2) of the Finance Act, 1940. *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1951] A. C. 433, explained.

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(b) ESTATE DUTY

*Re Payton, (Decd.)*; *Payton* v. *C. I. R.*, [1951] 2 All E. R. 425; [1951] T. R. 189 (C. A.).

(1) *Statutory provisions*: Sections 1 and 2 (1) (*d*), the Finance Act, 1894.

(2) *Point*: In a passing under section 1 of the Finance Act, 1894, there must be some property identifiable and persisting independently of the beneficial interests therein. A pension payable to a contributor until death and thereafter to his widow until her death, pursuant to election by the contributor under the "last survivor" clause of a pension scheme, does not constitute such a single continuing proprietary interest, when distinguished from the beneficial interests subsisting in it. *Re Cassel*, [1927] 2 Ch. 275 and *Re Duke of Norfolk's Will Trusts*, [1950] Ch. 25, distinguished.

(3) *Facts and Decision*: In 1933 and 1942 the Austin Motor Co., Ltd., effected group pension policies with the Legal and General Assurance Society, with the object of providing (*inter alia*) pensions for certain of the company's employees. The terms of the policies were substantially similar, and under these terms members of the scheme, which was contributory, were entitled subsequent to the normal pension date (as defined) to a pension computed in accordance with

predetermined scales annexed to the policies. The right thus secured was subject to an option in the following terms :—

> " at any time prior to normal pension date a male member may give written notice to the society requiring that any pension benefit becoming payable to such member at normal pension date shall after the member's death be paid to a (named) surviving wife . . .".

The effect of exercise of the option was that a pension, at a somewhat reduced rate, became payable to the member for life and thereafter to his widow.

The terms of the policy further provided :—

(a) that the company should hold the policy and all benefits payable thereunder in trust for the persons to whom the same were expressed to be payable; and

(b) that the assurance society should pay to the person specified by the schedule to the policy as being entitled thereto, the appropriate benefits as the same fell due.

The deceased, Mr. Payton, was chairman and managing director of the company, and an original member of the scheme assured by both policies; he gave notice, as required, exercising the last survivor option, and on his retirement received a pension at the appropriate reduced rate. On Mr. Payton's death in 1946, a pension at the same rate was paid to his widow (under each policy). The Crown claimed duty under section 1 of the Finance Act, 1894, upon the basis that the pension was a continuing pension which passed to the widow on the deceased's death.

*Held* (affirming the decision of Wynn-Parry, J.) :—

(i) that upon a proper construction of the contract contained in the policies of assurance, there were two successive pensions and not one continuing pension;

(ii) that accordingly there was no passing under section 1 of the Finance Act;

(iii) that the pension benefit accruing to the widow (Mrs. Payton) was an interest " purchased or provided by the deceased " and chargeable with duty to the extent of the beneficial interest arising, pursuant to section 2 (1) (*d*) of the Finance Act, 1894;

(iv) that as the deceased never had an interest in the pension benefits secured to the widow, the property therein deemed to pass under section 2 (1) (*d*), *supra*, was exempt from aggregation with other property passing (or deemed to pass) at the deceased's death.

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*Re D'Avigdor-Goldsmid's Life Policy*; *D'Avigdor-Goldsmid* v. *C. I. R.*, [1951] 2 All E. R. 543; [1951] T. R. 249 (C. A.).

(1) *Statutory provisions*: Section 2 (1) (*c*) and (*d*), the Finance Act, 1894; section 30 (1), the Finance Act, 1939.

(2) *Point*: Policy moneys payable upon a death constitute an interest then arising under section 2 (1) (*d*) of the Finance Act, 1894, and this will be so notwithstanding the fact that the holder (by

assignment *inter vivos*) became absolutely entitled to the benefit of the policy at the date of assignment to him.

(3) *Facts and Decision*: The deceased in 1904 effected a policy of assurance on his own life and for his own benefit; in 1907 he married and by ante-nuptial settlement (*inter alia*) the policy was settled by him. Under the limitations of trust a protected life interest was reserved to the deceased and subject thereto, and to a rent charge in favour of his wife, the settled property was limited to the first and other sons of the marriage in tail male. The deceased covenanted to pay the premiums on the policy as they fell due. In 1928 by private Act of Parliament, the deceased was empowered to deal with his protected life interest and pursuant thereto by deed of resettlement executed in 1930 the property therein specified, including the policy of assurance, was settled on such trusts as the deceased and his eldest son should jointly appoint, but subject to certain declared trusts. The deceased again covenanted to pay the annual premiums.

In 1934, by virtue of powers conferred by the deed of resettlement, the deceased and his eldest son appointed part of the settled property, including the policy, to the son absolutely, with the result that the son became absolute beneficial owner of the policy. Thereafter until the deceased's death the son paid the annual premiums as they fell due. In all, thirty-seven premiums were paid of which thirty-one were paid by the deceased, *viz.*, four prior to the date of the marriage settlement, twenty-three prior to the date of the resettlement and four thereafter.

The Crown claimed estate duty on the policy moneys under section 2 (1) (*c*) of the Finance Act, 1894, or alternatively under section 2 (1) (*d*), *ibid.*, as amended by section 30 (1) of the Finance Act, 1939:

Under section 2 (1) (*c*), *supra*, on the grounds that the son was a donee of the policy moneys under the original settlement of 1907, and in this view that the charge of duty extended to nine-elevenths of such

moneys { *i.e.*, $\frac{27 = \text{premiums paid by deceased}}{33 = \text{total premiums paid from date of settlement in 1907.}}$

Under section 2 (1) (*d*), *supra*, on the grounds that the policy moneys constituted an interest beneficially arising to the son on the death of the deceased, and that that interest was to be treated as having been wholly provided by the deceased as a result of the appointment of 1930 (in the son's favour) having comprised property other than the policy.

*Held* (reversing the decision of Vaisey, J.):—

(i) that the word "donee" in section 11 (1) of the Customs and Inland Revenue Act, 1889, as re-enacted by section 2 (1) (*c*) of the Finance Act, 1894, must be given its natural meaning and, in particular, was not equivalent to "grantee";

(ii) that as the son (it was conceded) derived title to the policy moneys under his father's marriage settlement (of 1907) he was within the marriage consideration, and could not therefore be aptly described as a donee within the

meaning of section 2 (1) (*c*), *supra*. *Att.-Gen.* v. *Jacob-Smith*, [1895] 2 Q. B. 341, applied—the Crown's claim under section 2 (1) (*c*), *supra*, therefore failed;

(iii) that there was an "interest", namely the benefit of the policy of assurance, and by virtue of section 30 (1) of the Finance Act, 1939, that interest was provided by the deceased;

(iv) that the benefit of the policy (*i.e.*, of the contract of insurance) passed to the son under the 1934 appointment, but the right to receive the sum assured, which only arose upon the death of the deceased, was a beneficial interest arising within section 2 (1) (*d*), *supra*.

The Crown's claim to duty under section 2 (1) (*d*) of the Finance Act, 1894, *supra*, therefore succeeded.

*Att.-Gen.* v. *Dobree*, [1900] 1 Q. B. 442; *Att.-Gen.* v. *Robinson*, [1901] 2 Ir. R. 67, applied. *Lord Advocate* v. *Hamilton's Trustees*, 1942 S. C. 426, doubted.

Leave to appeal to the House of Lords granted.

(*Note*: the question of assignment *inter vivos* of fully-paid policies was referred to, but expressly left at large.)

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*St. Aubyn* (*L. M.*) *and Others* v. *Att.-Gen.* (*No.* 2), [1951] 2 All E. R. 473; [1951] T. R. 217 (H. L.).

(1) *Statutory provisions*: Sections 43, 46, 47, 56, 58, the Finance Act, 1940.

(2) *Facts and Decision*: *The deceased was life tenant* under a deed of resettlement dated April, 1897, *of settled property consisting in freehold lands, investments* (*representing capital moneys arising under the resettlement*), *and certain equitable interests*. The whole of the settled property was subject to an overriding general power of appointment exercisable by the deceased and a Mr. Ponsonby. The following summarises the relevant events and matters, as they occurred:—

(a) March 21, 1927: St. Aubyn Estates, Ltd. ("the company") incorporated with a nominal capital of £200,000 divided into 200,000 shares of £1 each.

(b) The memorandum was subscribed by seven persons (including the deceased and Mr. Ponsonby) who agreed to take one share each. These shares were held by the subscribers as nominees for the trustees of the resettlement.

(c) March 23, 1927: by deed poll of this date the deceased and Mr. Ponsonby varied the powers of investment (under the resettlement) to authorise investment in shares or debentures of the company.

(d) March 24, 1927: by agreement of this date between the deceased, Mr. Ponsonby and the company, it was agreed that

the whole settled property should be sold to the company for £1,700,000 payable to the trustees as follows :—

£950,000 — in cash on completion
£750,000 — by forty equal half-yearly instalments of £18,750, not carrying interest.

(e) March 24, 1927: the company allotted 100,000 preference shares of £1 each, at par, to the deceased (for cash), and 49,993 ordinary shares of £1 each to the trustees, at a premium of £16 per share (for cash).

(f) March 25, 1927: by deed of this date the deceased as tenant for life directed the investment of the settled funds in ordinary shares of the company, at the premium required by the company. The deceased and Mr. Ponsonby in exercise of their overriding power of appointment ratified this direction.

(g) March 26, 1927: the sales to the company were completed; the consideration payable in cash, *viz.*, £950,000 was duly paid, but £850,000 was immediately repaid to the company as consideration for the issue of 49,993 ordinary shares of £1 at a premium of £16 per share.

(*Note*: At this stage therefore the property subject to the resettlement consisted in (1) 50,000 fully-paid ordinary shares of £1 each in St. Aubyn Estates, Ltd.; (2) the right to receive the capital sum of £750,000 by forty equal half-yearly instalments of £18,750 each; and (3) £100,000 in cash.)

(h) March 28, 1927: by deed of this date the deceased and Mr. Ponsonby in exercise of their overriding power of appointment, appointed the said sums of £750,000 (payable by instalments as above) and £100,000 to the deceased for his own absolute use and benefit.

(i) The trustees thereupon paid the said sum of £100,000 to the deceased who immediately paid it to the company as consideration for the allotment of the 100,000 preference shares to him.

(j) March 29, 1927: by deed of this date the deceased and Mr. Ponsonby in virtue of their overriding power, declared new trusts concerning the settled property (which then consisted in 50,000 fully-paid ordinary shares of £1 each in St. Aubyn Estates, Ltd.). The new trusts had the effect of extinguishing the deceased's life interest in the settled property and of excluding him from all benefit in the income thereof.

(k) In 1933 and 1936: the company made loans to the deceased upon interest at the rate of 4 per cent., on terms that the borrowed moneys should not be repaid until two years after the deceased's death.

The deceased died on November 10, 1940, and the Crown claimed duty on alternative grounds. Under section 43 of the Finance Act, 1940 (aided by section 56, *ibid.*) from the trustees of the resettlement on the 50,000 ordinary shares of the company, and, alternatively, under section 46 of the Finance Act, 1940, from the company, on a proportion of the company's assets corresponding to the benefits accruing to the deceased from the company in the relevant period. Under section 43, *supra*, on the ground, it was said, that the deceased

had obtained a benefit in that as a part of the same transaction which resulted in the determination of his life interest in the 50,000 ordinary shares of the company, benefit consisting in the lump sum payment of £100,000 and the debt of £750,000 payable by instalments (both under the deed of appointment dated March 28, 1927) became the deceased's absolute property.

Under section 46, *supra*, on the ground that as a result of dispositions made by the deceased (as to disposition *vide* section 58 (4), the Finance Act, 1940), property had been transferred to the company by him (as to the transfer, *vide* section 58 (2), the Finance Act, 1940) that the transfers had not been made by the deceased in a fiduciary capacity, and that "benefits" had accrued to the deceased from the company in the three years ending with his death.

*Held*:—

(i) that the deceased had obtained his absolute interest in the £100,000 and the instalments (of the sum of £750,000) not as a result of any contract or bargain but in virtue of his overriding power of appointment (exercisable jointly with Mr. Ponsonby);

(ii) that in consequence there was no benefit obtained which was referable to the release by the deceased of his life interest in the 50,000 ordinary shares of the company (*Att.-Gen.* v. *Worrall*, [1895] 1 Q. B. 99; *Re Cochrane*, [1905] 2 Ir. R. 626; *Munro* v. *Stamp Duties Commr.*, [1934] A. C. 61; *New South Wales Stamp Duties Commr.* v. *Perpetual Trustee Co., Ltd.*, [1943] A. C. 425, considered and applied);

(iii) that the application of the "statutory hypothesis" required by section 56 of the Finance Act, 1940, did not alter the underlying principle of section 43, *ibid.*, *viz.*, that of retention of benefit.

The claim to duty under section 43 of the Finance Act, 1940, aided by section 56, *ibid.*, therefore failed.

(iv) (Lords Radcliffe and Tucker *diss.*:) that the payment by the deceased of £100,000 as consideration for the issue of preference shares to him was not a transfer of property to the company within the meaning of section 46, *supra*;

(v) that of the settled property transferred by the deceased to the company, the land so transferred was transferred (by the deceased) in a fiduciary capacity under his Settled Land Act powers, to that end;

(vi) (Lords Simonds and Oaksey *diss.*:) that the settled property consisting in investments and equitable interests was not transferred by the deceased to the company in a fiduciary capacity;

(vii) that there were "benefits" received by the deceased from the company within the three years ending with his death, *viz.*:—

(a) the instalments paid on account of the debt of £750,000;

(b) dividends received on the deceased's holding of preference shares;
(c) loans made to the deceased (pursuant to section 47).

The claim to duty under section 46, *supra*, therefore succeeded.

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*Lord Advocate* v. *Angus' Trustees*, [1951] T. R. 297 (C. S.).

(1) *Statutory provisions*: Sections 1 and 2 (1) (*c*), the Finance Act, 1894.

(2) *Point*: To determine whether settled property passes on a death under section 1, the material aspect for consideration is the beneficial title. If there is a change in the title as a whole, then there is a passing.

(3) *Facts and Decision*: Under the limitations of trust contained in a marriage settlement dated 1928, the income of settled funds was held upon the following trusts:—

(a) during the husband's life, upon trust to pay £400 per annum free of tax to the wife, and the balance to the husband;
(b) from the husband's death, if he predeceased the wife (as happened), for the wife during her life.

On the husband's death the Crown claimed duty, from the trustees, upon the whole settled fund under section 1 or alternatively section 2 (1) (*c*) of the Finance Act, 1894. The trustees maintained that no duty was chargeable on such part of the settled fund as was required by its income to yield £400 per annum, free of tax, to the wife.

*Held*, that the husband's death occasioned a change in the beneficial title to the income of the settled funds as a whole, and as a consequence the whole passed under section 1 of the Finance Act, 1894. *Cowley* v. *C. I. R.*, [1899] A. C. 198; *De Trafford* v. *Att.-Gen.*, [1935] A. C. 280, applied.

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# THE LIBRARY

*The Leasehold Property (Temporary Provisions) Act, 1951.* By T. J. Sophian and G. E. Llewellyn Thomas, Barristers-at-Law. London: Sir Isaac Pitman & Sons, Ltd. 82 pp. and index. (12s. 6d.).

Here is another work dealing with the above-mentioned Act. The book comprises an annotated edition of the Act. It is certainly an advantage to have the notes following each section; but anyone not familiar with the Act may feel that a general statement of the purposes and effect of the Act by way of introduction would have been helpful. The notes following the various sections, however, commence with a general note explaining the operation of the sections, and detailed notes concerning particular operations of the section follow. Those using the book without previous study of the sections will find that it is easier to grasp the effect of particular sections by first reading the general note.

E. O. W.

*The Formation and Annulment of Marriage.* By Joseph Jackson, M.A., LL.B., LL.M., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1951. 312 pp. (£2 2s.).

The "dark forest of the law of nullity", as Lord Justice Hodson calls it in his foreword, cannot be left to the practitioners in the Divorce Court and ignored by those engaged in the quieter waters of conveyancing and kindred matters. The effect of decrees of nullity on settlement, wills, income tax, etc., is carefully examined in Chapter III, and all the relevant cases on these aspects are there. We were rather surprised to see that apparently Mr. Jackson does not think *Re Wombwell,* [1922] 2 Ch. 298, is good law. If property is limited by a trust instrument first to the settlor until marriage and the "marriage" is voidable and a decree of nullity duly made, cannot the settlor make title by producing the trust instrument and decree of nullity without a vesting deed being executed? We would have thought so.

It is refreshing, when reading the parts dealing with the conflict of laws, to find an author who is content to start with the cases and then expound his views, rather than to set forth a theory and then endeavour to wrench the cases into line with the theory. For completeness, we suggest that a future edition should deal with marriage in community of property, the effect of foreign retrospective legislation validating irregular marriages and marriages within the lines of foreign armed forces. When the Polish forces were advancing through Italy many marriages were celebrated between Poles by religious ceremonies not complying with Italian law. The only textbook we know that throws any light on this question is *Foote. Galene* v. *Galene,* [1939] P. 237, is duly noted, but the question, whether our Courts should recognise a foreign decree of nullity in the case of a voidable marriage obtained at the instance of a parent (and possibly against the wishes of the parties), is not fully considered.

The law on the subject of nullity is in large part unsettled and obscure and the author, where he cannot tell us the answer, at least indicates what cases there are on the point and the different arguments that can be advanced.

The publication of so important a contribution to both the study and practice of law, with both the general principles and detail fully dealt with, is not so frequent an event that it can be passed by without note.

E. F. G.

*Rent Restrictions.* By ESTHER DANGERFIELD. "This is the Law" Series. London: Stevens & Sons, Ltd. 1951. 130 pp. (8s. 6d.).

As Mr. Megarry points out in his foreword to this book, to try to write a book explaining in simple language the Rent Acts, while at the same time avoiding dangerous inaccuracy, is to attempt a very difficult task indeed, and Miss Dangerfield is to be congratulated on her success in producing an extremely lucid exposition of the Acts. This series is not written for lawyers but for laymen who would like to have a working knowledge of the subjects covered. This book, which is well up to the standard of the series, should prove of great utility to estate agents and those concerned with the management of residential property, as well as landlords and tenants.

*Garsia's Law relating to Conveyancing in a Nutshell.* Third Edition. By BRYAN J. H. CLAUSON, B.A., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1951. 231 pp. (8s. 6d.).

This little book is principally designed for the use of Bar students and, on the whole, is a clear and concise examination notebook. There is a new chapter of just over three pages dealing with town and country planning which appears to us to be too short to be of much assistance. It might be possible to add to this chapter in future editions by jettisoning some of the space given to death duties and that given to lunatics so found, the last of whom, we believe, is now dead. There are one or two minor criticisms: a person who has never made a land charge search would have a very hazy idea of what happens in practice, against whom the search is made, and how many local land charge searches are made; the statement on p. 213 that two instruments appointing new trustees are only used in the case of settled land overlooks the Trustee Act, 1925, s. 35; and the footnote on puisne mortgages on p. 45 is misleading.

*Agricultural Death Duties.* By W. WALKER WATSON. The Country Gentleman's Association. (10s. 6d.).

In his introduction the author states;

> "This handbook aims at presenting the salient features of estate duty law and practice in a way which will assist property owners and their advisers to visualise with greater accuracy what is happening today to the inheritance of land."

He has certainly succeeded.

The reader will find a concise and wholly admirable exposition of the estate duty law and practice applicable to agricultural property generally, including a most useful chapter on the effect of the Finance Act, 1940.

The book is also designed as a piece of special pleading, as we are informed by the publishers, and in this respect I do not find the same cogency apparent. In short I am satisfied that there is a good case for the amendment of the laws imposing a duty on death, but why limit the suggestions contained in Chapter X to agricultural property?

D. M.

# PRECEDENTS

## Form 1

### Appointment of New Trustees by Personal Representatives of a Surviving Tenant in Common

THIS APPOINTMENT is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter called "the Appointors") of the one part and C of *etc.* and D of *etc.* (hereinafter called "the New Trustees") of the other part. Parties.

WHEREAS:— Recitals:

(1) This Appointment is supplemental to a Conveyance (hereinafter called "the Conveyance") dated *etc.* and made between X of the one part and E and F of the other part whereby certain freehold property situate at —— in the county of —— was conveyed to the said E and F in fee simple as tenants in common in equal shares conveyance to tenants in common;

(2) By virtue of the Transitional Provisions of the Law of Property Act 1925 the said property became vested in the said E and F on the statutory trusts vesting on statutory trusts;

(3) The said E died on the —— day of —— 19— death of first tenant in common;

(4) The said F died on the —— day of —— 19— having by his will dated the —— day of —— appointed the Appointors to be the executors thereof who duly proved the same on the —— day of —— 19— in the —— Probate Registry death of second and appointment of executors;

[(4) The said F died on the —— day of —— 19— intestate and on the —— day of —— letters of administration to his estate were on the —— day of —— 19— granted to the Appointors out of the —— Probate Registry] death intestate and grant of administration;

(5) The Appointors are desirous of appointing the New Trustees to be trustees of the statutory trusts affecting the said property comprised in the Conveyance in the place of the said F. desire to appoint.

NOW THIS DEED WITNESSETH as follows:—

Appointment of new trustees.

1. In exercise of the power for this purpose conferred by the Trustee Act 1925 and of every or any other power enabling them in that behalf the Appointors hereby appoint the New Trustees to be trustees of the said property comprised in the Conveyance and the statutory trusts affecting the same in place of the said F.

Declaration of trust.

[2. The New Trustees hereby declare that they will stand possessed of the proceeds of sale of the said property under the statutory trust for sale and other capital money and the net rents and profits until sale upon the trusts applicable thereto under or by virtue of the Conveyance the will dated the —— day of —— of the said E and the said will of the said F [the intestacy of the said E] or other the trusts on which the same ought to be held from time to time.] (*a*)

IN WITNESS.

## Form 2

**Lease of a detached dwelling-house for 5 years. Covenant to renew for successive periods of 5 years, the rent to vary in accordance with the value of the pound** (*b*)

Parties.

THIS LEASE made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Landlord" which expression shall where the context so admits include the estate owner or estate owners for the time being of the premises hereby demised immediately expectant on the term hereby granted) of the one part and B of *etc.* (hereinafter called "the Tenant" which

(*a*) If it is desired to put on record the devolution of the shares it seems preferable to do so in this way rather than by reciting the dealings in detail. Either way a purchaser will not be concerned with the equitable title.

(*b*) Having regard to the possible fluctuations in the value of money, the lessee may desire a provision whereby he is to pay less rent if the value of the £1 goes up, and the landlord on the other hand may desire one whereby he is to receive more rent if it goes down. It seems undesirable to bind both parties to the grant and acceptance of a new lease on these terms and it is thought better to have only a covenant to renew by the landlord. The lessee will probably be willing in any case to take a new lease at an increased rent even, if not bound to do so, as he will be desirous of keeping the house for occupation; and it seems not unreasonable therefore for the landlord to be bound to grant a new term even if the rent is to be less.

expression shall where the context so admits include his executors administrators and assigns) of the other part.

WITNESSETH that in consideration of the rent hereinafter reserved and the covenants on the part of the Tenant and the conditions hereinafter reserved and contained the Landlord hereby demises unto the Tenant — Demise.

ALL THAT messuage situate and known as No. — in —— Road in the Parish of —— in the County of —— — Parcels.

TO HOLD the same unto the Tenant for the term of 5 years from the —— day of —— next — Habendum.

YIELDING AND PAYING therefor during the said term the yearly rent of £X in respect of the demised premises by equal quarterly payments on the usual quarter days the first payment [being an apportioned sum] to be made on the —— day of —— next

AND the Tenant hereby covenants with the Landlord in manner following that is to say:— — Tenant's covenants:

(1) To pay the rent hereinbefore reserved at the times and in manner hereinbefore provided — to pay rent;

(2) To pay and discharge all present and future rates taxes duties assessments impositions outgoings and charges whatsoever whether parliamentary parochial local or of any other description which now are or may at any time hereafter be assessed charged or imposed upon or payable in respect of the demised premises or the owner or occupier in respect thereof Landlord's property tax only excepted — to pay rates;

(3) At all times during the said term to keep the said messuage and all additions and fixtures which may at any time be erected or placed upon or affixed to the demised premises in good and tenantable repair (damage by fire act of God and inevitable accident excepted) and in particular in the last year of the term to paint with two coats of good and proper oil paint paper with suitable quality paper grain varnish whitewash and colour all the inside parts of the demised premises usually painted grained varnished whitewashed and coloured and which the Tenant is hereby required to keep in repair and to paint the outside wood and iron [and stucco or cement work] of the — to repair and paint;

said messuage and all additions thereto with two coats of good and proper oil paint in a proper and workmanlike manner

to yield up in repair;

(4) At the expiration of the said term quietly to yield up the demised premises and all additions and improvements thereto and all fixtures of every kind in or upon the said premises or which during the said term may be affixed or fastened to or upon the same in the same good and tenantable repair (but subject to the same proviso) in which the Tenant is hereinbefore required to keep the same [except tenant's fixtures]

to allow landlord to enter and view;

(5) To permit the Landlord and all persons authorised by him to enter upon the demised premises or any part thereof at all reasonable times to inspect the condition thereof and of all defects decays or wants of reparation found upon such inspection which the Tenant shall be liable to make good under the covenants hereinbefore contained to give or leave notice on the demised premises And within the space of two calendar months after such notice to repair and amend the same according to such notice and covenants

to permit landlord to repair in default;

(6) That if the Tenant shall make default in complying with any such notice as aforesaid or in the performance of any of the covenants for or relating to repair or decoration hereinbefore contained it shall be lawful for the Landlord (but without prejudice to the right of re-entry hereinafter contained) to enter upon the demised premises and execute the requisite repairs decorations and work at the expense of the Tenant in accordance with the covenants and provisions herein contained and the Tenant shall on demand repay to the Landlord the expenses of such repairs decorations and work

not to alter or carry out development without permission;

(7) Not without the written consent of the Landlord first obtained at any time during the said term to make or suffer to be made any alterations or additions to the demised premises either internally or externally or to cut or maim any of the inside or outside walls floors or joists or to carry out or suffer to be carried out any development within the meaning of the Town and Country Planning Act 1947 or any statutory modification or re-enactment thereof for the time being in force

to apply for planning permission;

(8) If the Landlord shall give any such consent as is mentioned in the preceding covenant in respect of any matter

for which the permission of the local planning authority shall be requisite forthwith at the Tenant's own cost to apply for such permission and to pay or give proper security for the payment of any development charge leviable in respect thereof and not to commence carrying out such development until he shall have obtained and produced to the Landlord or his agent such permission and also the Certificate of the Central Land Board that any development charge in respect thereof has been paid or secured to their satisfaction or that no development charge is payable

to comply with planning law;

(9) Not to do or omit or suffer to be done or omitted any matter in contravention of the statutes statutory instruments rules orders or regulations for the time being being in force relating to planning control or any orders directions or notices made or given thereunder respectively and in particular to comply with the conditions attached to any permission for development granted or to be granted in relation to the demised premises and also at all times (without prejudice to any statutory indemnity in that behalf) to indemnify and keep indemnified the Landlord against all proceedings costs expenses claims and demands in respect thereof

to pass on notices to landlord;

(10) Forthwith to deliver to the Landlord a copy of any notice served upon him or any sub-tenant and of any order or proposed order affecting the demised premises and to take all reasonable steps to comply with such notice and also at the request and cost of the Landlord to make or join with the Landlord in making such objections representations or appeals in respect thereof as the Landlord may reasonably require

not to commit nuisance;

(11) Not to do or suffer to be done on the demised premises any act or thing which in the opinion of the Landlord may be or grow to be a nuisance annoyance or damage to the owners or occupiers of adjoining or neighbouring premises

to use as private dwelling-house;

(12) To use and occupy the said messuage as a private dwelling house only and for no other purpose

to insure;

(13) To insure and keep insured against loss or damage by fire [and aircraft] the said messuage and all additions thereto and fixtures of an insurable nature which at any time during the said term may be placed upon or affixed to the demised premises to the full value thereof in the ——

Insurance Office or in some other insurance office or with underwriters of repute to be approved in writing from time to time by the Landlord in the name of the Landlord and duly and punctually to pay all premiums or other money necessary for effecting and keeping up such insurance immediately on the same becoming due or within one week thereafter and produce to the Landlord or his agent wherever required the policy of such insurance and the receipt for the last premium thereof And that in case the said messuage or any part thereof shall at any time during the said term be destroyed or damaged by fire [or aircraft] then and as often as the same shall happen all moneys received in respect of such insurance shall with all convenient speed be laid out in rebuilding repairing or otherwise reinstating the same premises in a good and substantial manner under the direction of the Landlord's surveyor [and that the Tenant will pay the fees of such surveyor].

Provided that in default of the Tenant effecting and maintaining such insurance as aforesaid the Landlord may (without prejudice to the power of re-entry hereinafter contained) insure the said premises in manner aforesaid and pay the said premiums payable in respect thereof and all incidental expenses shall be repaid by the Tenant to the Landlord on demand

to permit landlord to put up board for re-letting;

(14) To permit the Landlord or his agent within three calendar months of the expiration of the said term (if the Tenant shall not have given notice of his desire to take a new lease) to enter upon the demised premises and to affix to any suitable part thereof a notice board for re-letting the same and not to remove or obscure such board and to permit all persons authorised in writing by the Landlord or his agent to view the demised premises at reasonable hours in the day time without interruption

to pay costs of application for possession;

(15) To pay to the Landlord all costs charges and expenses (including legal costs and surveyors' fees) which may be incurred by the Landlord of and incidental to the preparation and service of a notice under section one hundred and forty-six of the Law of Property Act 1925 or any statutory modification or re-enactment thereof for the time being in force

notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court

(16) Not to assign underlet or part with the possession of the demised premises or any part thereof without the consent in writing of the Landlord such consent not to be unreasonably refused. not to assign.

AND THE Landlord hereby covenants with the Tenant in manner following that is to say:— Landlord's covenants:

(1) That the Tenant paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on his part to be observed and performed may peaceably and quietly enjoy the demised premises without any interruption or disturbance by the Landlord or any person claiming under or in trust for him [or by title paramount] for quiet enjoyment;

(2) That if the Tenant shall be desirous of taking a new lease of the demised premises after the expiration of the term of 5 years hereby granted and of such desire shall give notice in writing to the Landlord at least 6 months before the expiration thereof (of which notice service in accordance with the provisions of section one hundred and ninety-six of the Law of Property Act 1925 shall be sufficient) [and shall pay the rent and perform and observe all the covenants and conditions on the part of the Tenant to be paid performed and observed up to the expiration of such term] then and in such case the Landlord and all other necessary parties (if any) will at the expiration of the said term at the cost of the Tenant make and execute to the Tenant a new and effectual lease of the demised premises for a term of five years to commence from and after the expiration of the existing term with and subject to the like covenants conditions and agreements as are herein contained including (subject as hereinafter mentioned) this present covenant for renewal but at a yearly rent being the amount bearing the same proportion to the yearly rent of £X (*b*) as the purchasing power of the pound sterling at the date of execution of the new lease to be granted in relation to the aggregate of essential goods and services (calculated in the same manner and in relation to renew lease for successive periods.

(*b*) This will be the rent under the original term.

to the same class of person as heretofore calculated for the purpose of the official index of retail prices or cost of living index) bears to its purchasing power so calculated on the —— day of —— 19— (*c*) such rent in default of agreement to be referred to the arbitration of the President for the time being of the Auctioneers and Estate Agents Institute of the United Kingdom in accordance with the Arbitration Acts 1889–1932 whose decision shall be final (*d*)

PROVIDED that the Tenant shall not be entitled to require the Landlord to grant him a new lease for a term ending later than the —— day of —— 19— and accordingly this present covenant for renewal shall not be inserted in the new lease (if any) the term whereof shall commence on the —— day of —— 19—.

Proviso for re-entry.

PROVIDED ALWAYS and this Lease is upon the express condition that if the rent reserved or any part thereof shall at any time be in arrear and unpaid for fourteen days or upwards (whether the same shall have been legally demanded or not) or if the Tenant shall at any time fail or neglect to observe or perform any of the covenants and conditions herein contained and on the part of the Tenant to be performed and observed then and in that event the Landlord may re-enter upon the demised premises or any part thereof in the name of the whole and thereupon the term hereby granted shall cease and determine without prejudice to the rights and remedies of the Landlord in respect of any antecedent breach of the covenants and conditions on the part of the Tenant herein contained.

IN WITNESS, *etc.*

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(*c*) This will be the date of the original lease.

(*d*) The official index of retail prices is at present intended to be made permanent and calculated on the basis of a new family budget. The basis may, however, vary in the future, or the index may not be kept up to date, or it may even be discontinued altogether, and it is thought better not to make the rent vary with the index for the time being, but that it should be agreed or fixed by arbitration on the basis of, and in the same manner as, the index at the date of the original lease.

## Form 3

### Forms of Agreement for the Sale of "Know-How" (a)

[These forms relate to an arrangement between the Alpha Corporation and Beta, Ltd., under which Alpha, who have much knowledge and experience of the manufacture of gammas, are to assist Beta to establish in the United Kingdom a new gamma-making plant. This plant is to supply certain Commonwealth markets as well as the United Kingdom itself.]

#### I. PRELIMINARY AGREEMENT: CLAUSES FOR SECURING THAT INFORMATION IS KEPT CONFIDENTIAL

1. Alpha will make available to Beta such matter relating to the Alpha system of gamma-making [*or*: to the methods of making and using Alpha's improved gammas] as may be reasonably necessary to enable Beta to decide whether or not to establish under agreement with Alpha in the United Kingdom a plant for such making of gammas [*or*: for the making of such gammas].

2. Beta undertakes that information so made available (whether before or after the date of this preliminary agreement) shall not at any time be disclosed by any person who has received the same from or at the instance of Beta or on Beta's behalf except either to a responsible employee of Beta requiring the same for the purposes of his employment or else with Alpha's express consent.

3. Beta further undertakes that such information shall not at any time be used by Beta or by any such person as aforesaid except either for the purposes of this preliminary agreement or for those of some subsequent agreement between the parties hereto.

4. If by the —— day of —— 19— the parties have not concluded an agreement for the establishment by Beta of a plant as aforesaid then Beta shall forthwith procure the return to Alpha of all documents supplied by or on behalf of Alpha and

(a) Drafted by T. A. Blanco White, Esq., of Lincoln's Inn, to accompany the article at p. 89, *ante*.

containing or disclosing any such information and further shall forthwith procure that any notes drawings or other documents not so supplied but containing or disclosing any such information are either delivered up to Alpha or destroyed as Beta may prefer.

5. If before that date the parties do conclude such an agreement then any such information shall thereafter be deemed to have been supplied by Alpha to Beta under that agreement.

## II. MAIN AGREEMENT

*Recitals*

WHEREAS:—

1. Alpha are in possession of certain valuable information relating to gammas and their manufacture and use and expect in the future to come into possession of further such information.

2. The parties hereto have agreed that Alpha shall assist Beta (by making such information available to Beta and otherwise) upon the terms and conditions hereinafter set out to establish within the United Kingdom a plant for the making of gammas.

3. It is the intention of the parties hereto that gammas made in the said plant shall be sold and used within the following area (hereinafter called "the territory") that is to say:—

4. It is further the intention of the parties that (unless and until Alpha otherwise require) such gammas may be sold and used within the following further area (hereinafter called "the additional territory") that is to say:—

*Operative Clauses*

1. *Supply of Information.*

A. Alpha shall so soon after the date of this agreement as Beta may reasonably require supply to Beta all specifications working and other drawings and other information that may be reasonably necessary to enable Beta to establish within the United Kingdom a gamma-making plant operating according to the best system known to Alpha [*or*: a plant for the making of the best form of gammas known to Alpha] and that may at

the date hereof be in Alpha's possession or under Alpha's control.

B. Alpha shall further during the setting-up of the said plant and thereafter as may be necessary to enable Beta to operate the same to the best advantage make available to Beta the services of a fully qualified and experienced engineer to advise and instruct Beta as to such setting-up and operation.

C. Alpha shall further give to not more than —— employees of Beta such access to Alpha's works at —— as may be reasonably necessary to enable them to become familiar with the methods of gamma-making there currently employed by Alpha.

D. Alpha shall further during the period of this agreement supply to Beta any information (other than published information) relating to the manufacture or use of gammas which may come into Alpha's possession and which Alpha shall be entitled to disclose.

2. *Supply by Beta of information.*

A. Beta shall during the period of this agreement supply to Alpha any information (other than published information) relating to the manufacture or use of gammas which may come into Beta's possession and which Beta shall be entitled to disclose.

B. Alpha shall be entitled to disclose to any person to whom Alpha may be bound by any obligation similar to that contained in Clause 1 (D) hereof any information supplied by Beta under this Clause but only if and so long as that person is bound to Alpha by an obligation corresponding to that contained in this present Clause.

3. *Exclusive rights and freedom from interference* (*b*).

A. Alpha shall not make or sell gammas within the territory nor assist or permit any other person to make or sell gammas within the territory nor assist or permit to make gammas any-

(*b*) This Clause is deliberately phrased so as to make it unnecessary to give the parties cross-licences under each others' patents, designs, etc.

where any person not bound by agreement with Alpha not to make or sell or assist others to make or sell gammas within the territory.

B. Beta shall not make gammas or assist or permit others to make gammas outside the territory nor assist or permit to make gammas anywhere any person not bound by agreement with Beta not to make or assist others to make gammas outside the territory.

C. Beta shall not sell or assist or permit others to sell gammas outside the territory and the additional territory, nor assist or permit to make or sell gammas anywhere any person not bound by agreement with Beta not to sell or assist others to sell gammas outside the territory and the additional territory.

D. Alpha may at any time hereafter enter into agreements for the establishment in places in the additional territory of plant for the making of gammas to be sold in the additional territory or any parts thereof and may thereafter give Beta not less than [3] months' notice to cease as from the commencement of operation of any such plant selling gammas in the additional territory or in any such part thereof as may be appropriate; and as from the expiry of that notice or the date of commencement of those operations (whichever shall be the later) the last preceding paragraph shall have effect as if there were no additional territory or that part were outside the additional territory as the case may be.

E. For the purposes of this Clause any person knowingly making or selling gammas for import into any area shall be regarded as assisting and permitting their sale within that area.

F. Alpha covenants that neither Alpha nor any person claiming under or through Alpha shall [at any time hereafter] interfere with the manufacture of gammas by Beta in accordance with this agreement or with the sale of gammas so made in any area where their sale by Beta is not precluded by para. C of this Clause.

G. Beta covenants that neither Beta nor any person claiming under or through Beta shall [at any time hereafter] interfere with the manufacture of gammas outside the territory by

Alpha or by any person whom Alpha has agreed to assist or with the sale outside the territory of gammas so made.

H. This Clause shall not require any party hereto to do or omit any act in any place where that act or omission is contrary to law or to public policy.

4. *Confidence.*

A. Beta shall treat as confidential any information supplied by or on behalf of Alpha under or pursuant to this agreement and shall ensure that such information is used solely to assist in the manufacture and sale of gammas in accordance with this agreement by Beta and Beta's subsidiary and associated companies.

[*Or alternatively*:

A. All information supplied by or on behalf of Alpha under or pursuant to this agreement shall be treated as confidential and shall be used solely to enable Beta and subsidiary and associated companies of Beta to manufacture and sell gammas in accordance with this agreement and during the continuance thereof; and all documents containing or disclosing any such information shall be and at all times remain the property of Alpha: PROVIDED THAT Alpha shall not during the continuance of this agreement demand the delivery-up of any such document.]

B. Beta shall ensure that no such information as aforesaid is disclosed except to responsible employees of itself and its subsidiary and associated companies without the express prior consent of Alpha: PROVIDED THAT in the case of information whose dissemination among customers of Beta (or of Beta's subsidiary or associated companies) is necessary for promoting the sales of gammas such consent shall not be unreasonably withheld.

5. *Payments.*

As consideration for the information supplied and to be supplied and for the assistance given and to be given by Alpha hereunder Beta shall pay to Alpha:

A. Upon the signing of this agreement the sum of ——.

B. A royalty in respect of each gamma in whose design or manufacture substantial use is made of any designs or information supplied by or on behalf of Alpha hereunder, or which is made upon plant making substantial use of any such designs or information whether that gamma is made or sold by Beta or by some other person or company to which those designs or that information has been supplied by or through or on behalf of or at the instance of Beta of —— per cent. of ——.

C. [Provisions as to mode and time of payment: laying down in particular whether it is the act of manufacture or of sale that is to attract royalty (*c*).]

D. [Provisions as to keeping and rendering of accounts (*c*).]

D. [Provisions for minimum royalty or giving Alpha the right to determine the agreement if royalties fall below a certain figure (*c*). In the last case only add:

[F. In the event of determination of the agreement under this Clause Beta shall procure the delivery-up to Alpha of all documents supplied by or on behalf of Alpha under or pursuant to this agreement or containing any information so supplied by or on behalf of Alpha and shall ensure that no information so supplied is thereafter used for any purpose by any person to whom it was supplied by or through or on behalf of or at the instance of Beta; and thereafter for —— years neither Beta nor any subsidiary or associated company of Beta shall make gammas (*d*).]

6. *Patents* (*e*).

A. Alpha shall on request by Beta at any time during the continuance of this agreement grant to Beta in respect of any

(*c*) These provisions (except where stated) may follow the usual forms employed in patent licences.

(*d*) This paragraph may also be made to cover determination upon forfeiture for non-payment of royalties, if provision is made for such forfeiture.

(*e*) Unless the patents are of substantial importance, it will probably be better to omit this Clause: reliance being placed instead on the covenants for freedom from interference, etc., contained in Clause 3. If the present Clause is included, Clause 8 must be omitted and the agreement will probably be determinable in due course under s. 58 of the Patents Act.

patent design registration copyright or like protection which covers any place in the territory or the additional territory and whose subject-matter is required by Clause 1 hereof to be disclosed by Alpha to Beta a licence free of all royalty (beyond that provided for by Clause 5 (B) hereof); such licences:

(i) in so far as they relate to the territory to be exclusive and to be expressed to endure for the period of this agreement [*or*: for the whole life of the protection concerned] [*or*: for the whole life of the protection concerned but to cease to be exclusive upon determination of this agreement]

(ii) in so far as they relate to the additional territory to be non-exclusive and to be expressed to endure for the period of this agreement [*or*: for the whole life of the protection concerned] but to be subject to a provision for determination in respect of any area which may at any time cease to be within the additional territory for the purposes of Clause 3 (C) hereof: [*adding, if appropriate*:

PROVIDED THAT any licence granted pursuant to this Clause shall determine if this agreement is determined under Clause 5 hereof.]

B. Beta shall on request by Alpha at any time during the continuance of this agreement grant to Alpha in respect of any patent design registration copyright or like protection which covers any place outside the territory and whose subject-matter is required by Clause 2 hereof to be disclosed by Beta to Alpha a licence free of all royalty; such licences:

(i) in so far as they relate to areas outside the additional territory or deemed for the purposes of Clause 3 (C) to be outside the additional territory to be exclusive and to be expressed to endure for the period of this agreement [*or*: *otherwise following the wording used in para.* A (i)]

(ii) in so far as they relate to areas inside the additional territory for the purposes of Clause 3 (C) hereof to be non-exclusive and to be expressed to endure for the period of this agreement [*or*: for the whole life of the protection concerned] but without prejudice to Alpha's right to require the grant of

an exclusive licence thereafter should any area cease to be within the additional territory for the purposes of Clause 3 (C).

C. If during the continuance of this agreement either party shall make develop or acquire any invention or design which may in any area be capable of protection under which the other would or might be entitled to an exclusive licence then the party so making or developing that invention or design shall before publishing or publicly or commercially using the same either apply to protect the same in that area in which it may be capable of such protection or communicate it to the other and assist that other (if that other so desire) at that other's own expense and for its own benefit to protect it in that area.

7. *Trade Marks.*

A. So soon as Alpha shall be satisfied that the gammas made by Beta or by any subsidiary or associated company of Beta conform to the standards of quality currently applied by Alpha to its own production due application shall be made for the registration of Beta (or of that subsidiary or associated company of Beta as the case may be) as user of Alpha's Registered Trade Mark "——" No. —— in Class ——; such registration to continue only during the continuance of this agreement and only so long as Alpha shall remain satisfied as aforesaid.

B. Upon the granting of such registration the company so registered may [*or*: shall (*f*)] use the said mark within the "permitted use" upon and in advertising matter relating to all gammas manufactured by it.

C. The user shall not associate the said mark with any other trade mark except Beta's name or its own name except with Alpha's express prior written consent and shall give due prominence to the fact that the said mark is the property of Alpha.

D. Neither Beta nor any subsidiary or associated company of Beta shall at any time use the said mark or permit it to be used otherwise than in accordance with a "permitted use".

(*f*) It will normally be to Alpha's advantage to insist on its mark being used on every gamma, if its use is to be allowed at all; to Beta's advantage to have a mere option to use it.

8. *Supply of materials etc.*.(*g*).

Beta shall obtain from Alpha as much of Beta's requirements of deltas to be used in gamma-making as Alpha shall be able to supply within a reasonable time of the placing by Beta of an order therefor; and Alpha shall use its best endeavours to supply to Beta with all due despatch all such deltas so ordered by Beta.

9. *Assignment.*

A. Alpha may assign this agreement and its rights thereunder so long as no such assignment prejudices Beta's right to any information or assistance.

B. Beta may not assign this agreement or the benefit thereof or any right thereunder without the express prior consent of Alpha; and Alpha may as a condition of such consent require the entry by the assignee into a covenant with Alpha to perform the obligations of Beta under this agreement.

10. *Promotion of sales.*

Beta shall use its best endeavours to ensure that any demand for gammas in any area in which it may be currently entitled to sell gammas hereunder is met to the fullest possible extent and upon reasonable terms and otherwise to ensure that the number of gammas made and sold in accordance with this agreement is as large as circumstances permit.

## Form 4

**Grant of Perpetual Rentcharge to issue out of existing Rentcharge charged on Two Houses** (*a*).

*Drafted by E. H. Bodkin, of Lincoln's Inn*

THIS DEED OF GRANT is made the —— day of —— 19— Parties. BETWEEN A of *etc.* (hereinafter called "the Vendor") of the

(*g*) This clause must be omitted if the agreement makes any mention of patents, and in various other cases in which patents are in fact involved.

(*a*) This appears to be the best method of selling and conveying part of a perpetual rentcharge. An alternative method would be a settlement on

one part and B of *etc.* (hereinafter called "the Purchaser") of the other part.

Recitals:

WHEREAS:—

conveyance reserving rentcharge;

(1) By a Conveyance dated the —— day of —— 19— and made between the Vendor of the one part and C of the other part ALL THOSE two pieces or parcels of land situate in the parish of —— in the county of —— with the two messuages or dwelling-houses then in course of erection on the same respectively and known as or intended to be called Numbers 1 and 2 in —— Street were conveyed to the said C in fee simple subject and reserving to the Vendor in fee simple a perpetual yearly rentcharge of £X to be charged upon and issuing out of all the said property and to be paid without any deduction by equal half-yearly payments on the —— day of —— and the —— day of —— in every year And subject and reserving to the Vendor and his successors in title the right at any time if the said C should in any wise make default in completing in accordance with the covenant in that behalf in the said conveyance the said messuages or dwelling-houses or either of them and should continue in default for the space of —— months after notice in writing to make good the same to re-enter upon the said property or any part thereof and take the rents and profits thereof as therein mentioned

agreement for grant of lesser rentcharge.

(2) The Vendor has agreed in consideration of £Y to grant

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trust for sale, the proceeds of sale to be held in the required proportions. A rentcharge is "land" within s. 34 of the Law of Property Act, 1925—see the definition in s. 205 (1) (ix)—and an undivided share in it cannot be created except by means of a trust for sale. Even if to avoid this difficulty an apportionment between the two houses of the original rentcharge were agreed between the vendor and purchaser it is not clear how far this would be effective if the landowner did not concur. There would be a doubt as regards the right of the purchaser to sue the landowner for the apportioned sum (either under the personal covenant or as terre-tenant) in his own name, or even, possibly, as regards his statutory remedies for recovery in s. 121 of the Law of Property Act, 1925. Under the grant of a new rentcharge in the above form, on the other hand, the purchaser will have under s. 122 the right to appoint a receiver in the same way as if he were a mortgagee, and the receiver will be able under s. 109 to exercise all the remedies of the vendor for recovery of the original rentcharge in the latter's name. The original rentcharge can be treated as informally apportioned between the two houses if desired.

unto the Purchaser the yearly rentcharge of £Z hereinafter granted to issue out of the said yearly rentcharge of £X.

NOW THIS DEED WITNESSETH as follows:—

Grant of new rentcharge.

1. In pursuance of the said agreement and in consideration of the sum of £Y now paid by the Purchaser to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) the Vendor As BENEFICIAL OWNER hereby grants unto the Purchaser in fee simple a perpetual yearly rentcharge of £Z to commence from the day of these presents and to be charged upon and issuing out of the said perpetual yearly rentcharge of £X so charged upon and issuing out of the said property comprised in the said Conveyance dated the —— day of —— 19— and to be paid without any deduction except for income tax by equal half-yearly payments on the —— day of —— and the —— day of —— in every year the first payment [being an apportioned sum] to be made on the —— day of —— next.

Covenant to pay.

2. The Vendor hereby covenants with the Purchaser that he the Vendor will henceforth pay to the Purchaser the said yearly rentcharge of £Z at the times and in the manner hereinbefore appointed for the payment thereof free from all deductions except as aforesaid.

Acknowledgment for production of conveyance.

3. The Vendor hereby acknowledges the right of the Purchaser to the production of the duplicate of the said Conveyance dated the —— day of —— 19— possession whereof is retained by him and to delivery of copies thereof And hereby undertakes with the Purchaser for the safe custody of the same.

[4. *Certificate as to value.*]

IN WITNESS *etc.*

## Form 5

### Conveyance on Sale by the Trustees of a Settlement to a Tenant for life in exercise of statutory power.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A B of *etc.* and C D of *etc.* (hereinafter called "the Trustees") of the first part E F of *etc.* (hereinafter called "the Tenant

for life") of the second part and the Tenant for life of the third part (*a*).

WHEREAS:—

(A) By a Vesting Deed dated *etc.* and made *etc.* the property comprised in the [First] Schedule hereto was [together with other property] vested in the Tenant for life for a legal estate in fee simple [subject to the restrictive covenants therein mentioned] upon the trusts of a trust instrument dated *etc.* and made *etc.* and the Trustees were thereby declared to be the Trustees of the said settlement for the purposes of the Settled Land Act 1925

(B) In exercise of the statutory power conferred upon them by section sixty-eight of the Settled Land Act 1925 the Trustees have agreed with the Tenant for life for the sale to him of the said property comprised in the [First] Schedule hereto [subject as aforesaid] for the sum of £—.

Now in pursuance of the said agreement and in consideration of the sum of —— pounds now paid to the Trustees by the Tenant for life (the receipt whereof the Trustees hereby acknowledge) THIS DEED WITNESSETH as follows:—

(1) In exercise of the power conferred upon them by section sixty-eight of the Settled Land Act 1925 and of every and any other power them hereunto enabling the Trustees as Trustees

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(*a*) Stamp ad valorem. The tenant for life being a trustee has no power to purchase the settled property independently of the Settled Land Act, 1925, s. 68. This section (subsection (2) ) provides that the trustees shall in addition to their powers as trustees have all the powers of a tenant for life in reference to negotiating *and completing* the transaction. Presumably, this operates as a statutory power to convey to the tenant for life, but it is not free from ambiguity because the legal estate is already solely vested in the tenant for life and the ambiguity is enhanced by the provision that the said powers "*may* be exercised . . . in the name and on behalf of the tenant for life", thereby implying that it is not necessary so to do. On the other hand a person may now convey to himself: Law of Property Act, 1925, s. 72 (1). This draft, therefore, takes advantage of both these provisions. Section 68 (2) of the Settled Land Act, 1925, also provides that the trustees shall have power to enforce any covenants by the tenant for life. This appears to be very material whenever there is any necessity for continuing or imposing covenants.

These powers of the trustees apply also to leases and mortgages where a similar formula would appear to be appropriate.

Where the tenant for life is one of the trustees the other trustees will act.

in the name and on behalf of the Tenant for life hereby convey and the Tenant for life as Trustee hereby conveys and confirms unto the Tenant for life ALL THAT the property comprised in the [First] Schedule hereto TO HOLD the same unto the Tenant for life in fee simple freed and discharged from all limitations charges and powers of charging under the trusts of the said Trust Instrument dated *etc.* [but subject to covenants and conditions contained in a Deed of Conveyance dated *etc.* and made *etc.* so far as the same are subsisting and capable of taking effect].

[(2) The Tenant for life hereby covenants with the Trustees acting in the name of and on behalf of the Tenant for life as estate owner and trustee of the said Trust Instrument dated *etc.* that he the Tenant for life as Purchaser will hereafter in respect of the said property hereby conveyed duly perform and observe the covenants and conditions and any of them contained in the said deed of conveyance dated *etc.* and will keep the Trustees acting as aforesaid indemnified against all costs claims and demands whatsoever in respect of the breach non-performance or non-observance of the said covenants and conditions or any of them]

[(3) The Trustees hereby acknowledge the right of the Tenant for life to the production of the deeds and documents specified in the Second Schedule hereto (possession of which is retained by them) and to delivery of copies thereof]

[(4) *Certificate of value*]

IN WITNESS *etc.*

## Form 6

**Conveyance of Freeholds by Trustees of a Settlement in whom Settled Land became vested on January 1, 1926, on the Statutory Trusts, together with Water Rights.**

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter collectively referred to as "the Vendors") of the one part and C of *etc.* (hereinafter called "the Purchaser") of the other part. Parties.

Recitals: settlement:

WHEREAS:—

(1) Under and by virtue of a Settlement (hereinafter called "the Settlement") dated *etc.* and made between *etc.* the property hereinafter described (together with other property forming the —— Estate over portions whereof rights and liberties are hereinafter granted) stood limited at the commencement of the Law of Property Act 1925 to the use of D, E and F (the daughters of G) as tenants in common in tail with cross remainders between them

vesting under transitional provisions:

(2) In the circumstances aforesaid the said property became on January 1 1926 by virtue of the Transitional Provisions of the Law of Property Act 1925 as amended retrospectively by the Law of Property (Entailed Interests) Act 1932 vested in the said A and X as the then trustees of the Settlement with a power of sale and as such the trustees thereof for the purposes of the Settled Land Acts 1882–1890 in fee simple upon the statutory trusts

death of one trustee;

(3) The said X died on the —— day of —— 19—

appointment of new trustee:

(4) By an appointment dated the —— day of —— 19— and made between the said A of the one part and the said B of the other part the said B was appointed a trustee of the statutory trusts aforesaid in the place of the said X deceased and jointly with the said A

agreement for sale.

(5) The Vendors as trustees for sale have agreed with the Purchaser for the sale to him of the estate in fee simple in the said property hereinafter described free from incumbrances together with the rights and liberties hereinafter granted for the sum of £——,

Conveyance.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— on or before the execution of these presents paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt and payment of which sum the Vendors hereby acknowledge) the Vendors AS TRUSTEES hereby grant and convey unto the Purchaser

Parcels.

FIRST ALL THAT messuage or tenement with the yard and outbuildings and the gardens woodlands and park land adjoining thereto and held therewith known as —— situate in the parish

of —— in the county of —— containing —— acres or thereabouts which premises are more particularly described in the First Schedule hereto and are delineated on the plan hereto annexed and thereon coloured —— [such plan being taken from the Ordnance Survey May dated —— of the said parish and the numbers in the said Schedule referring to the corresponding numbers in such Map and Plan].

SECONDLY the free and uninterrupted flow and passage of water from the well or spring situate on the field numbered —— on the said plan for the supply of water to the premises firstly hereinbefore conveyed at all times hereafter and for all [domestic] purposes in as full and ample a manner as heretofore through the pipes and tanks now used for conveying the same (the position whereof is indicated on the said plan) and through any pipes or tanks which may from time to time be substituted for the same.

THIRDLY the free right to discharge sewage water and other matter through the drain on the field numbered —— on the said plan into the septic tank in the same field the position whereof is indicated on the said plan and to maintain the said drain and septic tank in their present position.

FOURTHLY liberty for the Purchaser and his successors in title from time to time with workmen and others to enter upon the said fields numbered —— and —— respectively for the purpose of repairing renewing cleansing and maintaining the said pipes tanks drains and septic tank referred to in the liberties secondly and thirdly hereinbefore granted upon giving reasonable previous notice and doing no unnecessary damage and making full compensation for all damage to the premises occasioned by the exercise of this present liberty.

TO HOLD all the premises unto the Purchaser in fee simple freed and discharged from all the trusts powers and provisions affecting the proceeds of sale. Habendum.

2. The Vendors hereby covenant with the Purchaser that they will not do or suffer to be done on the said fields numbered —— and —— on the said plan anything which may damage the said pipes tanks drains and septic tank referred to in Covenant not to affect rights granted.

the liberties secondly and thirdly hereinbefore granted or do or suffer to be done on the said field numbered —— anything which may reduce the flow of water below that the right to which is secondly hereinbefore granted or pollute or affect the quality thereof (*a*).

Acknowledgment for production.

3. The Vendors hereby acknowledge the right of the Purchaser to the production of the documents mentioned in the Second Schedule hereto the possession whereof is retained by them and to delivery of copies thereof.

[4. *Certificate as to value, if required.*]

IN WITNESS, *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO

[*This will contain a detailed description of the property.*]

THE SECOND SCHEDULE ABOVE REFERRED TO

[*Documents retained by the Vendors.*]

(*a*) This covenant should be registered as a land charge. The purchaser should also require that a memorandum of the conveyance be endorsed on one of the common title deeds relating to the property conveyed and the adjoining property over which the easements are granted.

## Form 7

**Agreement between adjoining Owners for preserving a prescriptive right to light where the Premises have been destroyed by Enemy Action.**

AN AGREEMENT made the —— day of —— 19— BETWEEN A of *etc.* of the one part and B of *etc.* of the other part. Recitals: Parties.

WHEREAS:—

(1) The said A is the owner in fee simple of the messuage and premises being No. 1 in —— Street in the parish of —— and the said B is the owner in fee simple of the adjoining messuage and premises being No. 2 in —— Street aforesaid adjoining ownership;

(2) Previously to the destruction by enemy action of No. 2 —— Street the said B or his predecessors in title had enjoyed without interruption for twenty years and upwards the access of light over the yard at the rear of No. 1 —— Street to certain windows in No. 2 —— Street as shown on the plan hereto annexed in such circumstances as to acquire an absolute and indefeasible right to such light right to light before destruction;

(3) It has been agreed that for avoiding disputes and for the purpose of preserving evidence of such right that the parties hereto shall enter into the agreement hereinafter contained. agreement to preserve evidence.

NOW IT IS HEREBY AGREED AND DECLARED as follows:—

1. The said A so as to bind his successors in title hereby admits and agrees that the said B is entitled as appendant to No. 2 —— Street aforesaid to the right in fee simple to the access of light over the yard in the rear of No. 1 —— Street as enjoyed previously to the destruction of No. 2 —— Street to any window or windows which at any time may on the rebuilding of No. 2 —— Street or otherwise be substituted for the said windows or any of them or to the portion of any such substituted window or windows corresponding to the area of any window or windows so destroyed and may exercise such right without any interruption by the said A or his successors in title. Agreement as to future windows.

2. The said A shall endorse a memorandum of this Agreement on the conveyance of No. 1 to him relating to No. 1 —— Street. Memorandum to be endorsed.

Costs.

3. The costs of and incidental to the preparation and execution of this Agreement shall be borne by the said B (*z*).

AS WITNESS *etc.*

## Form 8

**Variation of implied covenants by Vendor and Purchaser upon an assignment of leasehold premises where the Vendor assigns as Beneficial Owner (*a*).**

*Drafted by E. O. Walford, LL.D., Solicitor*

THE respective covenants by the Vendor and Purchaser implied by virtue of the Law of Property Act 1925 shall be deemed to be varied as follows:—

(a) The Vendor shall be under no liability in respect of any failure to execute any works of repair renewal or decoration of the premises hereby assigned [or in respect of the failure to execute any other works to the said premises] in accordance with the terms of the said lease at whatsoever date the said works were due to be executed.

(b) The liability of the Purchaser under his implied covenant (*b*) with the Vendor as to performance and observance of the covenants agreements and conditions contained in the said Lease shall extend to the execution of all such works as aforesaid at whatsoever date

(*z*) A will probably require some consideration for entering into the agreement as he gains nothing by it.

(*a*) See article at p. 148, *ante*. The necessity for qualifying the vendor's covenant in such a case is emphasised by the recent decision in *Butler* v. *Mountview Estates, Ltd.*, [1951] 1 All E. R. 693. It is assumed as is usual upon the sale of leasehold premises, that the purchaser is to take the property in its present condition. It will be appreciated that there may be special circumstances in which further variations may be necessary. Thus, if the sale is one to which the Law Society's Conditions of Sale are applicable, and before contract the vendor has notice of, say, a requirement of a local authority requiring expenditure he will be liable to meet that expenditure; and if the requirement is due to the breach of a repairing covenant and is not satisfied before completion the vendor will be liable to give to the purchaser an indemnity covenant.

(*b*) See L. P. A. 1925, 2nd Schedule, Part IX.

the said works were or shall be due to be executed, and his liability to indemnify the Vendor against all proceedings costs claims and expenses shall extend to proceedings costs claims and expenses on account of any omission to execute such works as last mentioned.

## Form 9

**Deed of Family Arrangement authorising a Tenant for Life to enter into a Building Agreement for the conversion of a large Dwelling-house held for a term of ninety-nine years into flats providing for the grant of an Underlease to a builder in consideration of one of the flats being reserved for the Tenant for Life at a nominal rent with an option to one of the Remaindermen to take a further underlease of such flat on the Tenant for Life's death** (*a*).

THIS DEED OF FAMILY ARRANGEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "Mrs. A") of the first part BA of *etc.* (hereinafter called "the Son") of the Parties.

(*a*) This and the following agreement are intended to meet the case where a widow who is the tenant for life of the family home finds it too large to occupy and wants to have it converted into flats retaining one for her own use at a nominal rent during her life. Ordinarily, the trust instrument under which she holds will not authorise her to come to an arrangement with a builder under which he takes over the whole premises in consideration of his providing her with a flat for her use during her life at a nominal rent, nor is such a transaction within her statutory powers under the Settled Land Act, 1925. Accordingly, it is necessary for her first to come to an agreement with the persons entitled in remainder authorising the arrangement she desires. In the case envisaged, the property in question is leasehold and a builder is to take an underlease of the premises for the residue of the term at a reduced rent in consideration of his executing the required works, with an option to purchase the lease should he so desire when the works are completed. At the same time an option is reserved to the widow's daughter and son to take a lease of the flat on the widow's death.

In order to carry the transaction into effect, the widow, the son and daughter should enter into a deed of family arrangement authorising the widow to enter into the agreement she has come to with the builder. After this deed has been executed, a vesting assent should be executed by the testator's personal representative vesting the property in the widow as tenant for life. Such assent should contain a provision that in extension of her Settled Land Act powers she may enter into the agreement and execute an underlease or assignment to give effect to its terms.

second part CA of *etc.* (hereinafter called "the Daughter") of the third part and E of *etc.* and F of *etc.* (hereinafter called "the Trustees") of the fourth part.

Recitals: will of testator;

Whereas GA (hereinafter called "the Testator") duly made his will dated the —— day of —— 19— and after appointing the Trustees to be executors and trustees thereof bequeathed to the Trustees his leasehold dwelling-house known as Whiteacre situate at —— together with the furniture and effects therein upon trust to permit his wife Mrs. A to occupy the same during her life and after her death upon trust for the Son and Daughter as tenants in common in equal shares and he directed his Trustees to hold his residuary estate after the death of Mrs. A upon trust for the Son and Daughter as therein provided

death of testator and grant of probate;

And whereas the Testator died on the —— day of —— 19— and his said will was on the —— day of —— 19— duly proved in the —— Probate Registry by the Trustees

desire of tenant for life to convert premises into flats;

And whereas Mrs. A is living in Whiteacre with the Daughter but she finds it too large and expensive to maintain indefinitely as her home and she is accordingly desirous of being empowered to have Whiteacre turned into flats one flat being retained for her own use during her life

agreement to conversion;

And whereas the Son and Daughter have agreed that Mrs. A shall be empowered to turn Whiteacre into flats upon the terms and in the manner hereinafter provided

agreement as to options.

And whereas the Son and Daughter have agreed that they shall respectively have an option to take a lease of the flat to be retained for Mrs. A during her life upon the terms hereinafter contained

Witnesseth.

Now this Deed witnesseth and it is Hereby Agreed and Declared as follows:—

Authority to enter into building agreement.

1. Mrs. A as tenant for life of Whiteacre shall have power to enter into and execute an agreement (hereinafter called "the building agreement") already engrossed and intended to be executed after this agreement has been executed made between Mrs. A of the first part X of *etc.* builder of the the second part and the Son and Daughter of the third part and to grant an underlease to the said X at the rent and upon the terms

contained in the First Schedule thereto and to do anything which may be necessary or convenient for carrying the building agreement into effect.

Power to sell furniture.

2. Mrs. A shall be at liberty to sell such part of the Testator's furniture and effects in Whiteacre as she shall not desire to retain for use in the said retained flat and she shall be at liberty to retain for her own use and benefit the proceeds of any such sale.

Agreement as to exercise of options.

3. The Son and Daughter hereby agree:—

(a) That the Daughter shall on the death of Mrs. A have a first option to take a lease of the said retained flat on the terms of the option contained in the building agreement and in the event of the Daughter not exercising the said option within the time therein specified that the Son shall have a like option exercisable in manner provided by the building agreement

(b) That in the event of the Son or Daughter exercising the said option she or he (as the case may be) shall bring into account in the division of the Testator's residuary estate the sum of £—— which they agree is the value of the said option.

Provisions for determination of building agreement.

4. If for any reason the said X shall not carry out the terms of the building agreement and the same shall be determined by Mrs. A. pursuant to the powers therein contained then in that event the provisions hereof shall cease and determine and Whiteacre shall be held upon the trusts and subject to the powers and provisions contained in the said will of the Testator.

Provision as to costs.

5. The costs first of and incidental to the negotiation preparation and stamping of these presents secondly of the surveyor's fees and all legal and other expenses incidental to the negotiation and preparation of the building agreement save in so far as they shall be paid by X and thirdly of the Trustees (if any) shall be raised and paid by the Trustees out of the Testator's residuary estate.

IN WITNESS *etc.*

## Form 10

**Agreement by Tenant for Life to Grant an underlease for the residue of a term of ninety-nine years (less ten days) to a Builder at a reduced rent in consideration of his Converting the Premises into Flats and granting a lease to the Tenant for Life at a peppercorn rent. Options to the Remaindermen to take a further lease of the flat and to the Builder to take an assignment of the Head Lease (*a*).**

Parties.

AN AGREEMENT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Lessor" which expression shall where the context so admits include the estate owner or estate owners for the time being of the reversion of the premises hereby agreed to be demised) of the first part; X of *etc.* (hereinafter called "the Lessee" which expression shall where the context so admits include his executors administrators and assigns) of the second part; and B of *etc.* of the third part and C of *etc.* of the fourth part.

Agreement to grant of underlease.

1. In consideration of the rent and agreements on the part of the Lessee hereinafter reserved and contained the Lessor hereby agrees to grant to the Lessee or his nominee or nominees at the time and in the manner and subject as hereinafter mentioned an underlease of ALL THAT messuage or dwelling-house known as Whiteacre situate at —— in the county of —— together with the land held therewith with the appurtenances thereof which are held by the Lessor under a lease (hereinafter called "the Head Lease") made the —— day of —— between E (who and whose successors in title are hereinafter called "the Head Lessor") of the one part and F of the other part for the term of —— years less the last ten days thereof from the —— day of —— next ensuing at the yearly rent of £—— payable quarterly without deduction (except for landlord's property tax) and to be in other respects in the form of the underlease contained in the first schedule hereto.

Lessee to convert premises into flats.

2. The Lessee shall at his own cost with all reasonable speed convert the said dwelling-house into —— self-contained flats

(*a*) This agreement is intended to give effect to the deed of family arrangement, *ante*, p. 527.

and shall erect on the said land a garage and suitable coal storage and shall partition the garden of the said premises. All which works shall be carried out in a substantial and workmanlike manner with the best materials of their several kinds and in conformity in every respect with the plans elevations sections and specifications already approved of and agreed by the surveyor for the time being of the Lessor and under the inspection and to the satisfaction of such surveyor and of the surveyor of the Head Lessor with all proper and suitable appurtenances such works to be completed on or before the —— day of —— PROVIDED ALWAYS that if any delay in completely finishing the said works shall arise from fire tempest frost or other inevitable cause or accident or from any strike or lockout in the building or other trade or employment such further time shall be allowed for completion as the Lessor's said surveyor shall in writing certify to be reasonable.

Obligation of lessee to decorate flat for lessor.

3. On completion of the conversion of the premises into —— self-contained flats and of the other works in accordance with the provisions of clause 2 hereof the Lessee shall forthwith paint and decorate the flat to be constructed on the first floor in a workmanlike manner in accordance with the directions of the Lessor or her surveyor and to the reasonable satisfaction of her said surveyor PROVIDED THAT the Lessor shall not require the Lessee to expend in such painting and decorations more than the sum of £——.

Provision for grant of sub-underlease to lessor.

4. On completion of the said conversion and of the painting and decoration of the said first-floor flat the Lessee shall grant to the Lessor a sub-underlease (*b*) of the said first-floor flat for the residue of the said term of —— years less the last fifteen days thereof determinable after the death of the Lessor at a peppercorn rent and in all respects upon the terms of the sub-underlease (*c*) contained in the Second Schedule hereto.

Lessee to comply with building regulations.

5. The Lessee shall at his own expense in the execution of

(*b*) The tenant for life's right to a lease of one of the flats should be registered as an estate contract.

(*c*) The sub-underlease lease should be in the form of a principal vesting deed, so that should the tenant for life sell the proceeds of sale may be held on the trusts of the settlement.

the works aforesaid comply in all respects with the Building, Planning and other Acts affecting the premises and the regulations of the local authorities and any planning authority and do all such works and things required by any such Acts or regulations relative thereto and pay and indemnify the Lessor against all fees charges penalties claims and expenses including the development charge (if any) payable under the Town and Country Planning Act 1947 to be made and incurred thereunder or which may be payable for obtaining the approval of the local authorities or the planning authority to any of the works and matters aforesaid.

Lessee to pay costs incidental to obtaining the consent of the head lessor.

6. The Lessee shall pay the expenses incurred in obtaining the consent of the Head Lessor first to the grant of a licence to convert the premises into —— self-contained flats in manner aforesaid secondly to the use of the premises as —— self-contained flats and thirdly to the granting of an underlease of the premises to the Lessee by the Lessor on the terms specified in the First Schedule hereto and fourthly to the grant of a sub-underlease of the first-floor flat to be constructed as aforesaid to the Lessor on the terms specified in the Second Schedule hereto and further the Lessee shall pay all the expenses of the Head Lessor or his surveyor incurred in respect of the matters aforesaid and shall indemnify the Lessor in respect thereof.

Right of lessee to enter on the premises to execute works.

7. On the signing of this agreement the Lessee shall be at liberty to enter on the premises and forthwith to begin the operations specified in clauses 2 and 3 hereof PROVIDED ALWAYS THAT the Lessor her family and servants or any of them may continue in occupation of the premises during the conversion of the premises as aforesaid and the Lessee will use his best endeavours to cause them no unnecessary inconvenience and to protect their furniture and effects from damage but so that the Lessor her family and servants shall comply with all reasonable directions of the Lessee or his agents with regard to the occupation of any part of the premises which he or they may give.

Right of lessor to inspect works.

8. The Lessor or her surveyor or agent may at all reasonable times enter upon the part of the premises on which work is being carried on and view the state and progress of the work.

Provision against assignment.

9. The Lessee shall not assign or part with the benefit of this agreement without the previous consent in writing of the Lessor.

Lessee to insure.

10. The Lessee shall insure the premises and keep the same insured until the said underlease shall be granted in the full value of the same in the name of the Lessor and the Lessee.

Right of lessor to determine agreement in the event of the lessee failing to complete the works.

11. In case the said premises shall not be duly converted into —— self-contained flats completely finished and fit for habitation and the other works completed according to the stipulations hereinbefore contained in which respect time shall be of the essence of this agreement or in case of any breach of any of the agreements or stipulations herein contained and on the part of the Lessee to be observed and performed then and in any such case this agreement shall at the option of the Lessor cease and determine and the Lessor may re-enter upon and take possession of the said piece of ground and dwelling-house together with all buildings and erections thereon and without making to the Lessee compensation or allowance for the same.

Power to extend time for completing works.

12. If any default as aforesaid shall be made the Lessor shall be entitled to fix such extended period or periods for completing the said works as she shall think fit and in such case this agreement shall be read and construed as if the period or periods so fixed had been originally inserted instead of the period or periods hereinbefore fixed in that behalf.

Provision for execution of underlease.

13. The said underlease to be granted by the Lessor to the Lessee shall be granted to the Lessee and the Lessee shall accept the same and execute a counterpart thereof when and as soon as the works specified in clauses 2 and 3 hereof shall have been completely finished and the premises made fit for habitation in accordance with the stipulations herein contained and a certificate thereof signed by the Lessor's surveyor and the Head Lessor's surveyor if such surveyor be appointed shall have been produced to the Lessor; such underlease and counterpart to be prepared by the solicitors of the Lessor at the expense of the Lessee.

Provision for execution of sub-underlease.

14. Forthwith on the execution of the said underlease in favour of the Lessee the said sub-underlease of the said first-floor

flat shall be granted to the Lessor and the Lessor shall accept the same and execute a counterpart thereof.

Provision for death of lessee before grant of underlease.

15. If the Lessee shall die before the said dwelling-house shall have been finished and made fit for habitation and the other works hereinbefore mentioned shall have been executed according to the stipulations hereinbefore contained the Lessor shall be entitled at her option either to require this agreement to be performed by the executors or administrators of the Lessee or to determine this agreement by giving a notice in writing in that behalf to such executors or administrators and if she shall elect to determine the same she shall pay to the executors or administrators of the Lessee the amount which shall be certified by the Lessors said surveyor to have been properly expended by the Lessee in or about the building of the said dwelling-house and the execution of the other works aforesaid after deducting the value of the old materials.

Option to daughter to take lease of flat.

16. For the consideration aforesaid the Lessee hereby agrees with the said B that if on the death of the Lessor the said B shall be desirous of having a lease of the first-floor flat for the residue of the said term of —— years less the last fifteen days thereof and shall give to the Lessee a notice in writing to that effect within two calendar months of the death of the Lessor then and in such a case the Lessee will grant to the said B a sub-underlease of the said first-floor flat at the rent and upon the terms of the sub-underlease (*d*) contained in the Third Schedule hereto.

Option to son to take lease of flat.

17. For the consideration aforesaid the Lessee hereby agrees with the said C that in the event of the said B not exercising the option contained in clause 16 hereof if the said C on the death of the Lessor shall be desirous of having a lease of the said first-floor flat for the residue of the said term of —— years less the last fifteen days thereof and shall give to the Lessee a notice in writing to that effect within four calendar months of the death of the Lessor then and in such case the Lessee will grant to the said C a sub-underlease of the first-floor flat at the rent and upon the terms of the sub-underlease contained in the Third Schedule hereto.

(*d*) This option should be registered as an estate contract.

Option to builder to take assignment of the head lease.

18. If when the works specified in clauses 2 and 3 hereof shall have been completely finished and the Lessee shall have become entitled to have an underlease granted to him but such underlease shall not have been executed pursuant to the provisions of clause 13 hereof the Lessee shall give to the Lessor one month's notice in writing of his desire to purchase the said premises for the residue of the said term of ninety-nine years granted by the Head Lease then on the expiration of such notice and upon payment of the sum of £—— together with interest thereon at the rate of five per cent. from the expiration of the said notice to the completion of the purchase the Lessor will assign the said premises to the Lessee for all the residue of the term of ninety-nine years granted by the Head Lease at the rent thereby reserved and subject to the Lessee's covenants and conditions therein contained and to the right of the Lessor to the grant of a sub-underlease under clause 4 hereof and to the respective options conferred by clauses 16 and 17 hereof.

Provision as to costs.

19. The costs of and incidental to the preparation and execution in duplicate of this agreement and of the underlease to be granted under clause 1 hereof and the sub-underlease to be granted under clause 4 hereof shall be borne and paid by the Lessee.

Agreement conditional on consents being obtained.

20. This agreement is conditional upon the Lessee obtaining the consent of the Head Lessor to the provisions hereof in accordance with clause 6 hereof and to his obtaining all necessary permissions and licences to the execution of the works provided for in this agreement on or before the —— day of —— next (time to be of the essence) and in the event of the Lessee failing to obtain such consents permissions and licences this agreement shall cease and determine.

AS WITNESS *etc.*

THE FIRST SCHEDULE

[*To contain a draft of the underlease to be granted to the Lessee*]

THE SECOND SCHEDULE

[*To contain a draft of the sub-underlease to be granted by the Lessee to the Lessor*]

THE THIRD SCHEDULE

*[To contain a draft of the sub-underlease to be granted to B or C]*

## Form 11

**Will giving a Family Business to a son and providing for the Death Duties payable in respect of the business to be recouped to residue over a period of years, the residue being settled on the Widow and Children (*a*).**

*This Precedent was drafted by Miss B. A. Bicknell of Lincoln's Inn*

I, A of *etc.* declare this to be MY LAST WILL which I make this —— day of ——.

1. I hereby revoke all former wills and testamentary dispositions by me heretofore made.

Appointment of executors.

2. I appoint my son B (hereinafter called "my son") and C of *etc.* (hereinafter called "my Trustees") to be the executors and trustees of this my will and I declare that the words "my Trustees" shall mean the said B and C or the survivor of them or other the trustees or trustee for the time being of this my will and I declare that my Trustees shall be the Trustees for the purposes of the Settled Land Act 1925.

Legacies to wife.

3. I give and bequeath to my wife D free of all duty the sum of £—— to be paid to her within —— calendar months of my death together with all articles and effects of personal domestic or household garage or garden use ornament or

(*a*) Owing to the high rate of estate duty payable in respect of an estate of any size if all the duty falls to be discharged out of residue, the residue is frequently insufficient to provide adequately for the testator's widow and children. On the other hand, where a family business is left to one child it may be impossible for that child to pay immediately the estate duty attributable to the business without crippling the business. This will is intended to meet this difficulty by throwing the duty in the first instance on residue but requiring it to be recouped to residue over a period of years by the beneficiary who takes the business, he in the meantime paying interest in such part of the death duties as for the time being remain unpaid.

consumption belonging to me at my death and not otherwise effectually disposed of by me.

Bequest of business and devise of business premises to son.

4. (i) I bequeath and devise to my son the goodwill of my trade or business of —— at present carried on by me at —— and the stock in trade machinery plant and effects employed therein or belonging thereto together with all my estate and interest in the said premises where the said business is now carried on and my interest in any other premises in which the said business may be carried on at my death and the benefit of all contracts subsisting in respect of the said business and all book debts and moneys due to me in respect thereof or standing to the credit of my business account at my bankers at my death my son discharging and indemnifying my general estate from all debts and liabilities due or subsisting in respect of the said business at my death

Direction for payment of death duties.

(ii) I direct my Trustees to pay and discharge out of my residuary estate all death duties payable in respect of the said business assets and property bequeathed and devised by sub-clause (i) to my son

Direction for repayment of duties.

(iii) I direct my son to repay to my Trustees all moneys paid by my Trustees on account of death duties under the provisions of sub-clause (ii) hereof by ten equal half-yearly instalments the first of such instalments to be paid at the expiration of the first year from my death together with interest at the rate of £5 per cent. per annum on such part of the said moneys as shall from time to time remain unpaid PROVIDED ALWAYS that my son may at any time if he so desires pay and discharge the whole of the said moneys so paid by my Trustees on account of death duties or any part thereof in addition to any instalments thereof already due AND I DIRECT my son if my Trustees at any time by notice in writing require him so to do to give to my Trustees such security for the payment of the debts and liabilities due or subsisting at my death in respect of the said business and for the repayment to my Trustees of all moneys paid by them on account of death duties under sub-clause (ii) hereof as they may reasonably require including a charge on the premises hereinbefore bequeathed and devised to him AND

Trust of moneys repaid.

I DIRECT my Trustees to stand possessed of all moneys repaid to them on account of death duties as aforesaid upon the trusts hereinafter declared of the capital of my residuary estate and to stand possessed of all interest paid to them by my son in respect of any unpaid instalments of such moneys upon the trusts hereinafter declared of the income of my residuary estate

Gift of business to trustees in the event of the son's death.

(iv) In the event of my son dying in my lifetime I devise and bequeath the goodwill of my said business the said assets thereof and the said premises in which it is or may be carried on (as the same are hereinbefore bequeathed and devised to my son) to my Trustees upon trust to sell the same with power to postpone such sale without being responsible for any loss and to stand possessed of the net proceeds of sale upon the trusts hereinafter declared of my residuary estate and I DECLARE THAT pending such sale my Trustees may carry on my said business during such period as they shall think fit with power for that purpose to retain and employ therein the capital which shall at my death be employed therein, and such additional capital as they shall think fit to advance from time to time out of my residuary estate and to employ at such salary as they shall think fit any manager of the said business and generally to act in all matters relating to the said business as if they were beneficially entitled thereto and to delegate all or any of the powers vested in them in relation to the said business to any persons or person whom they may think fit: And my Trustees shall be free from all responsibility and be fully indemnified out of my estate in respect of any loss arising in relation to the said business and I DECLARE THAT the net profits of the said business until the sale thereof shall be applied as income of my residuary estate.

Devise and bequest of residue.

5. I give devise and bequeath all my real and personal property of whatsoever nature and wheresoever situate of or to which I am possessed or entitled or over which I have a general power of appointment at my death which is not otherwise disposed of by this my will or any codicil hereto Unto my Trustees Upon Trust to sell call in and convert the same into money at such time or times and in such manner as they shall

think fit (but as to reversionary property not until it falls into possession unless it shall appear to my Trustees that an earlier sale would be beneficial) with power to postpone the sale calling in or conversion of the whole or any part thereof (notwithstanding that the same may be leaseholds or other property of a terminable hazardous or wasting nature) during such period as they shall think proper and to retain the same or any part thereof in its actual form of investment without being responsible for loss AND I DIRECT that the income of such of the same premises as for the time being shall remain unsold shall as well during the first year after my death as afterwards be applied as if the same were income arising from investments hereinafter directed to be made of the proceeds of sale thereof and that no reversionary or other property not actually producing income shall be treated as producing income for the purposes of this my will.

Trust for investment.

6. My Trustees shall out of the moneys to arise from the sale calling in and conversion of or forming part of my said real and personal property and my ready money pay my funeral and testamentary expenses (including all estate duty leviable at my death in respect of my residuary estate) and debts and the legacies given by this my will or any codicil hereto and all death duties and other moneys payable under clause 4 hereof AND at their discretion invest the residue of the said moneys in or upon any of the investments hereby authorised with power to vary or transpose such investments of or into others of a nature hereby authorised.

Trusts of residue.

7. My Trustees shall stand possessed of the residue of the said moneys and the investments for the time being representing the same and of such part of my estate as shall for the time being remain unsold and unconverted and of the sum to be paid to my Trustees by my son under clause 4 hereof (all of which premises are hereinafter referred to as "my residuary estate") Upon the following trusts that is to say:—

Widow for life.

(i) My Trustees shall pay the income of my residuary estate and the interest payable by my son under clause 4 hereof to my wife during her life

Ultimate trust for children and issue.

(ii) After the death of my wife my Trustees shall stand

possessed of the capital and future income of the trust fund on trust for all or any my children or child living at the death of the survivor of myself and my wife and the children or child then living of any then deceased child of mine who whether children or grandchildren attain the age of twenty-one years or marry under that age if more than one in equal shares as tenants in common but so that the children of any deceased child of mine shall take equally between them as tenants in common only the share which their parent would have taken had he or she survived me and attained a vested interest

Son to bring business into hotchpot.

PROVIDED ALWAYS and I HEREBY DECLARE that my son and his issue shall not be entitled to share in my residuary estate without bringing into account the value of the business assets and property taken by him under clause 4 (i) hereof and accounting for the same accordingly and for the purpose of this clause I DIRECT that the value of the said business assets and property shall be the probate value thereof after deducting therefrom first all debts and liabilities due or subsisting in respect of the said business at my death and secondly all death duties payable in respect thereof by my son.

8. [*Insert investment clause.*]

Power of appropriation.

9. My Trustees may in extension of the power of appropriation conferred on personal representatives by section 41 of the Administration of Estates Act 1925 at any time or times at their sole and absolute discretion appropriate any part of my residuary estate in its then actual condition or state of investment in or towards satisfaction of any legacy or any share in my residuary estate whether or not the same be settled.

Power for professional trustees to charge.

10. Any executor or trustee for the time being hereunder being a solicitor or other person engaged in any profession or business shall be entitled to charge and be paid free of duty and in priority to all other dispositions contained in this my will or any codicil hereto all usual professional or other charges for business done by him or his firm in the premises whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of a solicitor or other professional person.

IN WITNESS *etc.*

## Form 12

### Conveyance of Freeholds on a Purchase by a Trustee of the Trust Property (*a*).

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter collectively referred to as "the Vendors") of the first part C of *etc.* of the second part D of *etc.* of the third part E of *etc.* of the fourth part and the said B (hereinafter called "the Purchaser") of the fifth part.

Recitals: will of testator;

WHEREAS:—

(1) X late of —— in the County of —— (hereinafter called "the Testator") being at his death seised in fee simple in possession free from incumbrances of the property hereinafter assured duly made his will dated the —— day of —— 19— and thereby after appointing the Vendors to be executors and trustees thereof devised all his real estate unto the Vendors on trust for sale with power to postpone such sale and to invest the net proceeds of sale as therein mentioned and to hold the said proceeds of sale and the investments from time to time representing the same upon trust to pay the income thereof and the rents and profits of the said real estate until sale to his widow the said C during her life and after his death

IN TRUST as to capital and income for all or any his children or child living at his death who being male attained the age

(*a*) The rule is that a trustee cannot purchase from his co-trustee for sale; such a sale is no sale at all and is voidable by the beneficiaries. There must be independent agreement whereby the beneficiaries being at arm's length and knowing the trustee's disability agree to sell the property to him and he must disclose all information as to the value. (As to a subsequent purchaser's right to refuse the title in the absence of evidence of these facts see *Williams* v. *Scott*, [1900] A. C. 499.) The transaction in the above Precedent could be carried out alternatively by a sale by the beneficiaries of their interests in the proceeds of sale to the trustee, the trustees joining to convey the legal estate to the purchaser, who elects to bring the trust for sale to an end (see next Precedent); but if this course is adopted the conveyance will not override any claim for death duties and it will be necessary similarly to show that the beneficiaries have been properly advised. Stamp duty on the purchasing trustee's interest would, however, be avoided.

of 21 years or being female attained that age or married and if more than one in equal shares

death and probate; (2) The testator died on the —— day of —— 19— without having revoked or altered his said will which was on the —— day of —— 19— duly proved by the Vendors in the —— Probate Registry

state of family; (3) The testator left him surviving three children and no more *viz.* the said B, D and E all of whom have attained the age of 21 years.

assent; (4) By an Assent in writing under their hands dated the —— day of —— 19— the Vendors assented to the vesting in themselves of the property hereinafter assured upon the trust for sale declared by the said will of the testator

valuation of property; (5) The Purchaser is desirous of purchasing the said property and the said C, D and E being fully cognisant of the objections to his so doing by reason of his position as trustee for sale have agreed to waive the same [and the same property has been valued on behalf and on the instructions of the said C, D and E and the said A by Messrs. —— who valued the same at £—— and the said C, D and E have also been separately advised by Messrs. —— in the negotiation and preparation of these presents] [and are satisfied by independent valuation and otherwise that the purchase money of £—— is the full value of the said property in the open market]

agreement for sale. (6) The Vendors with the approbation and concurrence of the said C, D and E as aforesaid (testified by their execution hereof) have agreed to sell the said property and the fee simple thereof in possession free from incumbrances to the Purchaser at the aforesaid price of £——.

Conveyance. NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such trustees as aforesaid at the request of the said C, D and E (the receipt whereof the Vendors and the payment whereof the said C, D and E hereby respectively acknowledge) the Vendors in exercise of the said trust for sale and AS TRUSTEES hereby convey unto the Purchaser

ALL THAT *etc.* Parcels.

To HOLD unto the Purchaser in fee simple discharged from the trusts aforesaid. Habendum.

2. The said A hereby acknowledges the right of the Purchaser to production of the Probate of the said will of the testator and to delivery of copies thereof and if and so far as such acknowledgement may not have statutory effect and so far as relates to the acts and defaults of himself and his own personal representatives and so as to bind himself and his personal representatives only so long as the said Probate is in his or their possession or under his or their control and not further or otherwise and with intent so far as may be to bind the said Probate into whosesoever hands the same may come hereby covenants with the Purchaser and the persons deriving title under him that he or his personal representatives will (unless prevented by fire or unavoidable accident) upon the reasonable request in writing and at the cost of the Purchaser or the persons deriving title under him produce the said Probate or cause the same to be produced at all reasonable times to him or them or to his or their solicitor or agent or any person appointed by him or them for the purpose of inspection and comparison with abstracts or copies thereof and will produce or cause the same to be produced in the course of any judicial proceedings or otherwise for the proof or support of the title or claim of the Purchaser or the persons deriving title under him or any other purpose relative thereto And will also at the like request and cost deliver to the Purchaser or the persons deriving title under him such true attested or unattested copies of the said Probate and all indorsements thereon as he or they may require. Covenant to produce probate.

3. [*Certificate of value.*]

IN WITNESS, *etc.*

## Form 13

### Assignment by Two Tenants in Common of their Interests in the proceeds of sale of Leasehold Property to the Third.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* of the first part B of *etc.* of the second part Parties.

C of *etc.* of the third part and the said A, B and C of the fourth part.

Recitals:

WHEREAS:—

lease;

(1) By a Lease (hereinafter called "the Lease") dated the —— day of —— 19— and made between X of the one part and Y (hereinafter called "the Testator") of the other part ALL THAT *etc.* was demised to the said Y from the —— day of —— 19— for the term of —— years at the yearly rent of £—— and subject to the covenants on the part of the lessee and conditions therein contained

will of testator;

(2) The Testator duly made his will dated the —— day of —— 19— and thereby after appointing the said A, B and C to be executors and trustees thereof devised and bequeathed to them all his real and personal estate as tenants in common in equal shares

death and probate;

(3) The Testator died on the —— day of —— 19— without having revoked or altered his said will which was on the —— day of —— 19— duly proved by the said A, B and C in the —— Probate Registry

assent;

(4) The said A, B and C paid the funeral and testamentary expenses and debts of the Testator and the duties payable on his death in respect of the premises comprised in the said Lease and by an Assent in writing under their hands dated the —— day of —— 19— assented to the vesting of the said premises in themselves for all the residue of the said term subject to the rent reserved by and the covenants on the part of the lessee and conditions therein contained upon trust to sell the same with power to postpone sale and to hold the net proceeds of sale (after payment of costs) and the net rents and profits until sale (after payment of outgoings) In Trust for themselves as tenants in common in equal shares

agreement for sale.

(5) The said A and B have agreed with the said C for the sale to him of their one third shares in the net proceeds of sale and the net rents and profits until sale of the said premises at the price of £—— being two thirds of the sum of £—— at which the same premises have been valued on their behalf for the

purpose of the sale hereby effected [and they have been separately advised by Messrs. —— in the preparation and execution of these presents] (*a*).

NOW THIS DEED WITNESSETH as follows:—

Assignment of shares.

1. In pursuance of the said agreement and in consideration of the sum of £—— on or before the execution of these presents paid by the said C as to £—— one moiety thereof to the said A and as to £—— the other moiety thereof to the said B (the receipt and payment of which moieties they the said A and B hereby respectively acknowledge) each of them the said A and B AS BENEFICIAL OWNER hereby assigns unto the said C

ALL THAT the one third share to which he is entitled of and in the net proceeds of sale and the rents and profits until sale of All the property comprised in or demised by the Lease To HOLD unto the said C absolutely.

Assignment of lease by trustees.

2. The said A, B and C AS TRUSTEES and at the request of the said C hereby assign unto the said C All the property comprised in or demised by the Lease

TO HOLD unto the said C henceforth for all the residue now unexpired of the said term of —— years granted by the Lease discharged from the trusts aforesaid but subject henceforth to the payment of the rent and the performance and observance of the covenants on the part of the lessee and conditions by and in the Lease reserved and contained.

Covenant to pay rent, etc.

3. The said C hereby covenants with the said A and B that the said C or his successors in title will henceforth during the continuance of the said term pay the rent reserved by and perform and observe the covenants on the part of the lessee and conditions contained in the Lease and will at all times keep the said A and B effectually indemnified against all actions and proceedings costs damages expenses claims and demands whatsoever by reason or on account of the non-payment of the said rent or the breach non-performance or non-observance of the said documents or conditions or any of them.

4. [*Covenant for production of Probate, adapt cl. 2 of last Precedent.*]

(*a*) It is safer for the beneficiaries to be separately advised.

5. [*Certificate as to value.*]

IN WITNESS, *etc.*

## Form 14

**Scheme for constituting a fund by a Company for the advance of money to its employees to enable them to purchase Shares in the Company** (*a*).

### I. TRUST DEED

Parties.

THIS TRUST DEED is made the —— day of —— 19— BETWEEN A Ltd. (hereinafter called "the Company") of the one part and B of *etc.* and C of *etc.* (hereinafter called "the Trustees") of the other part.

Recital of desire to create fund.

WHEREAS:—

The Company is desirous of establishing a scheme for the purpose of providing money on loan for enabling the employees of the Company from time to time to purchase shares thereof for the purpose of giving them an interest in the Company's business.

NOW THIS DEED WITNESSETH as follows:—

Company to lend money to trustees.

1. The Company shall from time to time lend such sums of money to the Trustees (with or without requiring interest for the same) as it shall think fit for the purpose of constituting a fund (hereinafter called "the Fund") to be held and applied by the Trustees for the purposes hereinafter mentioned but so that the Company shall not be under any legal obligation to make any such loans.

---

(*a*) It is submitted that the scheme as drafted will not be a superannuation scheme within s. 23 of the Finance Act, 1943, on the ground that the payments will not be, or be deemed to be, in respect of "back service", and also that loans by the company to the trustees will not be within s. 36 of the Finance Act, 1947, provided the company is not "director-controlled", and consequently that they will not be reckoned as distributed profits for the purpose of profits tax. Anyhow, even if the scheme is a superannuation scheme within the above section the payments could at the company's election be apportioned among the back periods during which the services were rendered; and if the company is "director-controlled", sums repaid by the trustees to the company could be deducted for the years during which they were so repaid, assuming the loans had been treated as distributions to proprietors. The scheme is not invalidated by s. 54 of the Companies Act, 1948, provided the loans are not made to directors.

Trustees to lend money to employees for purchase of shares.

2. The Trustees shall out of the Fund or the accumulations of the income thereof lend such moneys as they shall think fit (but so that the Company shall have an overriding power to direct that a loan shall be made or withheld in any particular case) to the employees of the Company from time to time or any of them (but excluding directors holding a salaried employment or office in the Company in addition to their directorship) for the purpose of enabling them to purchase shares of the Company with a view only to their acquiring an interest in the Company's business and without regard to their length of service.

Conditions of repayment.

3. The Trustees shall as a condition of making a loan to an employee require him to enter into a contract or undertaking for the repayment to them of the money lent with or without interest at such time or by such instalments and together with such further security by way of deposit of the share certificates or otherwise as they shall think fit (but so that the Company shall have power to direct that any particular security be given).

Trustees' liability.

4. The Trustees shall not be under any personal liability to the Company for the repayment of any sums lent to them by the Company but shall forthwith repay to the Company any moneys received by them from time to time from an employee on account of the sum advanced to him in reduction of moneys lent to them by the Company.

Trustees' indemnity.

5. The Trustees shall be indemnified by the Company against all liabilities incurred by them in the execution of the trusts hereof and shall have a lien on the Fund and any securities in their possession or under their control for such indemnity.

Power to invest.

6. The Trustees may invest any moneys in their hands not immediately required for the purpose of making such loans as aforesaid in the purchase of shares of the Company and the dividends and bonuses thereon shall be added to the capital of the Fund and in particular they shall have power to acquire shares of the Company with a view to their eventual acquisition by employees of the Company.

Trustees to include two directors.

7. The Trustees hereof shall always include two directors of the Company.

Retiring director to cease to be a trustee.

8. Any Trustee who vacates his office as director of the Company shall be deemed to desire to be discharged from the trusts hereof for the purpose of the power to appoint new trustees.

Power to appoint new trustees.

9. The power of appointing new trustees hereof shall be vested in the Company.

IN WITNESS, *etc.*

## II. AGREEMENT BETWEEN TRUSTEES AND EMPLOYEE FOR REPAYMENT OF LOAN FOR PURCHASE OF SHARES

Parties.

AN AGREEMENT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Employee") of the one part and B of *etc.* and C of *etc.* (hereinafter called "the Trustees" which expression shall where the context so admits include the Trustees or Trustee for the time being of the Trust Deed hereinafter mentioned) of the other part.

Recital of loan under trust deed.

WHEREAS under the powers conferred on them by a Trust Deed dated the —— day of —— 19— and made between A Ltd. (hereinafter called "the Company") of the one part and the Trustees of the other part the Trustees have agreed to advance to the Employee (who is in the employment of the Company as a ——) the sum of £X being the purchase money [towards the purchase money of £Y] for certain shares in the Company which he is desirous of purchasing upon having the repayment thereof secured in manner hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:—

Provision for repayment of loan by instalments.

1. The Employee or his personal representatives shall repay to the Trustees [the said purchase money of £X] [the said sum of £X towards the purchase money] for the said shares so to be advanced by them as aforesaid [with interest at the rate of £—— per cent. per annum from the date of such advance upon the unpaid part thereof for the time being by equal quarterly instalments of £—— each payable on the —— day of —— the —— day of —— *etc.* in each year until the whole of such sum shall be fully paid and the interest on the part of the said sum for the time being remaining unpaid shall be paid on the same respective days.

PROVIDED that if any instalment of principal or interest or any part thereof shall remain unpaid for 30 days from the day so appointed for the payment thereof then the whole of the said sum or of the unpaid part thereof shall become immediately due and payable with interest thereon up to the date of payment

PROVIDED also that the Employee may on any day appointed for payment of principal and interest pay off all or any part of the said sum but so that the interest on the whole sum for the time being owing be fully paid]

Alternative provision for payment on death or retirement.

[or the balance thereof then remaining unpaid without interest forthwith upon his leaving the Company's employment or death whichever is the earlier PROVIDED that the Employee if he so desire may pay off from time to time all or any part of the balance of the said sum advanced to him.]

Share certificates to be deposited with the trustees.

2. The Employee shall deposit the certificates relating to the said shares with the Trustees until repayment of the balance of the said purchase money [and interest.]

Employee to receive dividends and bonuses.

3. The Employee shall notwithstanding anything herein contained be entitled for his own benefit to any bonuses bonus shares or dividends declared or payable in respect of the said shares.

IN WITNESS, *etc.*

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PROVIDED also that the Employee may on any day appointed for payment of principal and interest pay off all or any part of the said sum but so that the interest on the whole sum for the time being owing be fully paid]

[or the balance thereof then remaining unpaid without interest forthwith upon his leaving the Company's employment or death whichever is the earlier PROVIDED that the Employee if he so desire may pay off from time to time all or any part of the balance of the said sum advanced to him.] Alternative provision for payment on death or retirement.

2. The Employee shall deposit the certificates relating to the said shares with the Trustees until repayment of the balance of the said purchase money [and interest.] Share certificates to be deposited with the trustees.

3. The Employee shall notwithstanding anything herein contained be entitled for his own benefit to any bonuses bonus shares or dividends declared or payable in respect of the said shares. Employee to receive dividends and bonuses.

IN WITNESS, *etc.*

## Form 15

**Deed by which an ordinary mortgage debt secured on a reversionary interest is converted into a reversionary capital sum payable out of the reversion when it falls into possession** (*a*).

*Based on a form drafted by A. Withers of Lincoln's Inn*

THIS FURTHER CHARGE is made the —— day of —— BETWEEN A B of *etc.* (hereinafter called "the Borrower") of the one part and The —— Company, Ltd. whose registered office is at *etc.* (hereinafter called "the Company") of the other part. Parties.

WHEREAS this deed is supplemental to a mortgage (hereinafter called "the original mortgage") dated *etc.* and made between the Borrower of the one part and the Company of the Recitals: original mortgage;

(*a*) Stamp *ad valorem* as a mortgage for the reversionary sum defined in clause 2 (b). This deed secures a further advance, since a conversion is frequently accompanied by a further advance to cover costs, etc.

other part whereby the reversionary interests of the Borrower [under the will of his father —— deceased] were assigned to the Company by way of mortgage for securing the payment to the Company on the —— day of —— of the principal sum of £A with interest thereon as therein provided.

state of mortgage debt;

AND WHEREAS (*b*) the principal sum of £A and no more is now owing to the Company on the security of the original mortgage all interest and costs under the original mortgage having been paid up to the date of this deed.

agreement for further advance;

AND WHEREAS the Company has agreed with the Borrower to pay to him by way of loan the further sum of £B.

agreement to postpone repayment of advances without interest;

AND WHEREAS upon the treaty for the said loan it was agreed that the Company should allow the said sums of £A and £B to remain unpaid until the final date (hereinafter defined) and to carry no interest before that day and that in consideration of such concession the interests comprised in the original mortgage should be charged with the payment to the Company on the final date (hereinafter defined) of the further sum of £X.

agreement as to payment of interest.

AND WHEREAS upon the treaty for the said loan it was also agreed that the said sums of £B and £X should as from the final date (hereinafter defined) carry interest at the rate hereinafter mentioned and should with such interest be secured in manner hereinafter appearing and that the provisions of the original mortgage should be modified in favour of the Borrower in manner hereinafter appearing.

Witnesseth.

NOW THIS FURTHER CHARGE WITNESSETH and it is hereby agreed and declared as follows:—

1.—(a) This deed is executed in pursuance of the said agreements and for the mutual considerations herein appearing.

Acknowledgment of advance.

(b) The Borrower hereby acknowledges that the sum of £B has on the execution of this deed been paid by the Company to the Borrower by way of loan.

Definition clause.

2. In this deed the following expressions have the following meanings that is to say:—

---

(*b*) In the past in effecting a transaction of this character the original mortgage was often wholly discharged. The increased rate of stamp duty payable under s. 52 of the Finance Act, 1947, may make it desirable to keep alive the old debt on which the mortgage duty has been paid.

(a) "*The final date*" means the day of the death of —— who is the [mother] of the Borrower and is named in the original mortgage.

(b) "*The reversionary sum*" means the sum of £Z (*c*) being the total of the said sums of £B and £X the sum of £B now advanced and the sum of £X to be secured to the Company in return for repayment of the said sums of £A and £B being postponed until the final date without carrying any interest before that date.

(c) "*The mortgaged interests*" means all the interests comprised in or expressed to be assigned or charged by the original mortgage.

(d) "*The agreed rate*" means the rate of £—— p.c.p.a.

Release of liability to pay interest before final date.

3. The Company hereby releases the mortgaged interests from all liability to pay before the final date any money secured by the original mortgage or to pay any interest for any period prior to the final date.

Proviso for payment of interest after final date.

PROVIDED ALWAYS that notwithstanding the foregoing release the following provisions shall apply that is to say:—

(a) The mortgaged interests shall under the original mortgage (as hereby varied) remain liable to pay the said sum of £A on the final date and (as from the final date) to pay interest at the rate secured by the original mortgage on so much of the said principal sum of £A as may from time to time remain unpaid.

(b) The moneys originally secured by the original mortgage shall be kept on foot as a subsisting charge on all the mortgaged interests so as to protect the Company against all mesne incumbrances charges and estates if any such there be.

4. The Borrower as beneficial owner hereby:—

Charge of reversionary sum.

(a) Charges the mortgaged interests with the payment to the Company on the final date of the reversionary sum but without any interest thereon in the meantime and also (if the reversionary sum shall not be so paid) with the payment to the Company of (1) interest as from the final date at the agreed rate on so much of the reversionary sum as may from time to time remain secured

(*c*) It may be convenient to state the total sum charged in order to avoid trouble with the stamping authorities.

by this further charge and (2) all costs charges and expenses incurred by the Company after the final date (*d*) in or about the exercise of all or any of its rights under this further charge and

Restriction on right of redemption.

(b) Declares that the mortgaged interests shall not nor shall any part thereof be redeemable until payment to the Company not only of all moneys secured by the original mortgage (as hereby varied) but also of all moneys secured by this further charge.

Mortgage moneys to be paid free of duties.

5. All moneys secured by the original mortgage (as hereby varied) and this further charge respectively shall be paid free of death duties costs and other deductions.

Borrower exempted from personal liability.

6. The Borrower (*e*) shall not remain or be under any personal liability to pay any money secured by the original mortgage or this further charge or any costs or expenses hereafter incurred by the Company under the original mortgage or this further charge (*f*).

In witness *etc.*

## Form 16

### Clause enabling Lessee to Surrender Lease upon Giving Notice and Submitting an Offer by a Respectable and Responsible Person to Take a New Lease (*a*).

*Drafted by E. O. Walford, LL.D., Solicitor*

(1) If whilst at least [six months] of the term hereby granted remain unexpired the Lessee shall desire to surrender the term

(*d*) The provision as to payment of expenses can be varied according to the bargain actually made.

(*e*) The borrower can, if it is desired, covenant to pay the principal moneys and interest secured. In most cases he will however desire to leave the lender to rely on the security.

(*f*) The terms of the original mortgage can be further varied in any which the parties desire.

(*a*) See article at p. 310, *ante*. This form is intended for use in a case where the lease contains an absolute and unqualified covenant by the Lessee not to assign, underlet or part with [or share] possession of the demised premises or any part thereof, the term of the lease not being very short. It would be unreasonable, in normal cases, to insist that the original tenant should continue to pay the rent and perform the covenants without the right to obtain any reimbursement by assignment or underletting if it became necessary for him to remove from the demised premises. It is assumed that the Lessor desires to retain absolute control over

hereby granted at the [end of the current quarter for payment of rent] he shall be entitled to do so upon complying with the following conditions:—

The Lessee shall give to the Lessor written notice (hereinafter called the Surrender Notice) at least [two months] before the [next quarter day for payment of rent] of his desire to surrender the said term on the [said next quarter day] such notice to be accompanied by the following documents:—

(a) A written offer to take a new lease of the demised premises from the [commencement of the next quarter for payment of rent under this Lease] until the expiry of the term hereby granted at the same rent and subject to the same covenants conditions and provisions as are contained in these presents including the present clause (which lease is hereinafter called the proposed new Lease) such offer to contain the name and address of the person making the offer and to be signed by that person (hereinafter called the Nominee)

(b) Written references establishing the fact that the Nominee is financially able to meet the obligations of the proposed new lease and likely to prove a suitable tenant of the demised premises (which references are hereinafter called satisfactory references)

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dealings with the leasehold interest in order that he may be able to reject any assignee or undertenant proposed by the Lessee and either obtain vacant possession or select his own tenant. If the covenant against assignment or other dealings were coupled with a provision contemplating the giving of consent in certain specified cases, the Court might hold that s. 19 (1) of the Landlord and Tenant Act, 1927, applied, with the result that consent could not be unreasonably withheld, notwithstanding any provision to the contrary. The provisions of this form are intended to provide a middle course, which allows the Lessor absolute choice of any new tenant at the price of refusing to accept the nominee of the tenant (even if he is a respectable and responsible person). It would clearly be unreasonable to allow the tenant to surrender the lease upon putting up a man of straw as a substitute: hence the requirement that a respectable and responsible substitute should be nominated in order that the tenant should be entitled to surrender his lease. Although the Lessor must then accept a surrender he is not bound to accept the new tenant.

It is thought that this form may afford a means of avoiding the difficulties created by such decisions as *Re Smith's Lease*, [1951] 1 All E. R. 346, in cases where the Lessor is not prepared to leave it to the Court to determine whether his refusal to consent to a proposed underletting or assignment is reasonable, but appreciates that some concession must be made to the tenant.

(2) (i) Within [three] weeks after the receipt of the said Surrender Notice and documents the Lessor shall inform the Lessee in writing whether he is satisfied with the references of the Nominee and if he shall fail to do so then the references shall be deemed to be satisfactory

(ii) If satisfactory references have been furnished in respect of the Nominee and the Lessee has in all other respects complied with the conditions hereinbefore contained the Lessor shall accept such Surrender as aforesaid by the Lessee, and if (in his absolute discretion) the Lessor is prepared to grant the proposed new lease to the Nominee he shall within the said period of [three] weeks accept the offer of the Nominee by giving written notice to the Nominee of the acceptance of his offer

(iii) If the Lessor is not satisfied with the references of the Nominee he shall within the said period of [three] weeks give written notice to that effect to the Lessee and shall state in such notice whether he is prepared to accept the proposed Surrender (*b*) And if the Lessor fails to give such notice within the said period he shall be bound to accept the said Surrender

(3) PROVIDED ALWAYS and it is EXPRESSLY DECLARED as follows:—

(i) If satisfactory references have in fact been furnished the Lessor's refusal to accept them as satisfactory shall be of no effect

(ii) The said Surrender shall be without prejudice to the accrued rights and obligations of the Lessor and Lessee at the date on which the Surrender is to take effect and any Deed of Surrender executed for giving effect to such Surrender shall contain a declaration to that effect (*c*)

(iii) An offer by the Nominee to take the proposed new lease shall not be invalidated by a statement therein to the effect

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(*b*) The Lessor might wish to accept the surrender even if the Nominee's references were not satisfactory, *e.g.*, if he desired vacant possession or wished to let the premises to another person.

(*c*) The alternative is to require that the Lessee shall have complied with all his obligations as a condition precedent to the serving of the notice; but it is almost inevitable that some technical breach has occurred after a lease has been running for some time, even if it consists only of the failure to keep some trivial portion of the premises in good repair. Hence, it seems fairer to meet the point as provided in the text above.

that it is not open for acceptance after a specified date not being earlier than the date of expiry of the said period of [three] weeks

(iv) If by virtue of the provisions of this clause the Lessee shall be entitled to surrender the term hereby granted the Lessor shall prepare the said Surrender (*d*) which shall contain a statement to the effect that the Lessor accepts the Surrender therein contained and the said Surrender shall be executed by both the Lessee and the Lessor (*e*).

## Form 17

**Clause for Insertion in a Separation or Maintenance Deed Providing for the Revocation of the Deed in Certain Circumstances** (*a*).

*Drafted by Niul Hogg, Barrister-at-Law*

IT is hereby AGREED AND DECLARED as follows:—

(1) Nothing in these presents shall preclude or be taken as being intended to preclude or discourage the husband or the wife from making any application to the Court under any of the provisions of sections nineteen to twenty nine inclusive of

Right of either party to apply to the Court safeguarded.

(*d*) The settled practice is that the Lessor's solicitor is entitled to prepare a surrender of lease.

(*e*) The method of surrender of the lease has been adopted in this case in preference to notice determining the lease, because it seems undesirable that anyone investigating title to the property should have to examine notices of acceptances of notice, and possibly other documents in order to ascertain whether the lease has been effectively determined. However, whether there is a refusal to accept a surrender or a notice of determination resort to the Court could be the only solution, and where no dispute arises the examination of the notice of determination and acceptance of such notice would normally involve no more work than the examination of a Deed of Surrender. Hence some practitioners may prefer to adapt the provisions of this clause so as to provide for notice of determination and its acceptance by the Lessor (subject to the conditions above made applicable in the case of a proposed surrender), thus obviating the expense of a Deed of Surrender. The form above is so drawn that the alterations necessary to substitute notice of determination of the term for notice of intention to surrender the term can be made with very little difficulty.

(*a*) An article by Mr. Hogg explaining the need for and purpose of this clause will be found on p. 311.

the Matrimonial Causes Act 1950 or from undertaking any other proceedings of a similar nature.

(2) If as a result of such an application as aforesaid or otherwise

If wife successful in her application and

(a) the husband is ordered to pay or secure to the wife or any other person any sum whether a lump sum or a periodical sum for the maintenance of the wife or of the child or of both the wife and the child; or

(b) the husband is ordered to execute any deed or other document to provide for such maintenance; or

(c) any settlement is by order varied in such a manner as to be less advantageous to the husband;

husband not in breach of his covenants

husband to have power of revocation.

And if at the time both of the commencement of the proceedings and of the making of the order the husband shall not be in breach of any of the covenants herein contained and by him to be performed or observed the husband may revoke the whole or any part of these presents by giving written notice to that effect to the wife.

Restriction of power where order benefits child only.

PROVIDED ALWAYS:—

(i) that where the order provides for the maintenance or benefit of the child only such revocation shall not extend beyond clause —— (*b*) hereof

Time limit for exercise of power.

(ii) that such revocation shall be made within six months of the making of the order

Saving of things done and rights accrued.

(iii) that such revocation shall not prejudice or affect anything which may have been done or any right of action which may have accrued before such revocation.

Power exercisable as often as conditions arise.

(3) The power of revocation contained in the previous subclause shall be exercisable whenever and as often as the conditions for its exercise arise.

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(*b*) The number of the clause in which the husband covenants to pay a sum for the maintenance of the child should be inserted here.

## Form 18

**Conveyance of Freehold Dwelling-house Free from Mortgage but Subject to an Apportioned First Perpetual Rentcharge in Consideration of a Sum of £—— and a Second Perpetual Rentcharge of £——. Concise Form** (*a*).

*Drafted by J. J. Somerville, Barrister-at-Law*

THIS CONVEYANCE made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor" which expression shall where the context so admits include successors in title) of the one part and B of *etc.* (hereinafter called "the Purchaser" which expression shall where the context so admits include successors in title) of the other part.

WHEREAS:—

(a) By a Conveyance dated the —— day of —— 19— (hereinafter called "the Conveyance") made between C of *etc.* of the one part and the Vendor of the other part for the consideration therein mentioned the dwelling-house more particularly described in the Schedule hereto and hereby assured together with three other dwelling-houses were conveyed unto the Vendor subject to a perpetual rentcharge of £—— (hereinafter called "the First Rent") created by an Indenture dated the —— day of —— 19— (hereinafter called "the Rent Grant") made between D of *etc.* of the one part and E of *etc.* of the other part subject to the restrictive covenants and conditions contained in an Indenture dated the —— day of —— 19— (hereinafter called "the Restrictive Indenture") made between F of *etc.* of the one part and G of *etc.* of the other part so far as the same affected the properties thereby conveyed and were then subsisting and capable of taking effect

(b) The Vendor has agreed with the Purchaser for the sale and transfer to him of the fee simple of the said property free from incumbrances in consideration of the yearly rentcharge of £—— (hereinafter called the "Second Rent") hereinafter

(*a*) Stamp *ad valorem* on the amount of the money consideration together with twenty times the amount of the newly created rentcharge. The apportioned first or overriding rentcharge does not attract stamp duty. The Conveyance should be executed in duplicate.

reserved and of the covenants by the Purchaser and the provisions hereinafter contained and of a sum of £—— subject nevertheless to the payment of an equitably apportioned rentcharge of £—— (hereinafter called "the Apportioned First Rent") part of the First Rent reserved by the Rent Grant.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) and of the Second Rent hereby reserved and the covenants by the Purchaser hereinafter contained the Vendor as beneficial owner hereby conveys and grants unto the Purchaser

ALL THAT the property more particularly described in the said Schedule

TO HOLD the same unto the Purchaser in fee simple reserving out of the said property hereby conveyed to the Vendor in fee simple a perpetual yearly rentcharge of £—— being the Second Rent to be forever charged upon and issuing out of the property hereby conveyed and to be paid without any deduction save for property or income tax by annual consecutive payments on each subsequent anniversary of the date of this Deed the first payment to be made to the Vendor on the immediate expiration of twelve months from the date hereof but subject with the other properties thereby affected to the First Rent but partially exonerated therefrom in manner hereinafter appearing and subject also to the restrictive covenants and conditions contained in the Restrictive Indenture so far as the same affect the property hereby conveyed and are still subsisting and capable of taking effect.

2. IT is hereby declared that the said property is held at the date hereof for use as a single private dwelling-house together with the right to use the same property for such other purposes as may now or hereafter be authorised with such use aforesaid under or by virtue of the Town and Country Planning Act 1947 or any Act for the time being amending or replacing the same.

3. THE Purchaser hereby covenants with the Vendor:

(1) To pay to the Vendor at all times hereafter free from all deductions save as aforesaid the Second Rent at the times hereinbefore appointed for the payment; and

(2) With the object and intent of affording to the Vendor a full and sufficient indemnity but not further or otherwise that he the Purchaser will at all times hereafter duly perform and observe the covenants and restrictive conditions contained in the Restrictive Indenture and will at all times hereafter keep the Vendor effectually indemnified against all actions charges claims costs damages demands and proceedings whatsoever in respect thereof.

4. As between the property hereby conveyed and the other property comprised in the Conveyance the property hereby conveyed shall henceforth stand charged with the payment of the Apportioned First Rent in exoneration of the other properties and the said other properties shall stand charged with the payment of the residue of the Rent in exoneration of the property hereby conveyed.

5. THE cross covenants (B) referred to in subsection (1) of section 77 of the Law of Property Act 1925 and the cross powers of entry and distress mentioned in subsection (2) of section 190 of the same Act are implied herein (*b*).

6. (1) THE Purchaser hereby charges the property hereby conveyed with the payment of all such moneys (if any) as shall become payable by him under the implied covenants herein (*c*).

(2) THE Vendor hereby charges the properties retained by him being the residue of the said properties comprised in the Conveyance with the payment of all moneys (if any) which shall become payable by him under the implied covenants herein (*c*).

7. THE Vendor hereby acknowledges the right of the Purchaser to the production of the Conveyance (the possession

(*b*) These statutory provisions are already implied as the Vendor conveys as beneficial owner.

(*c*) See Law of Property Act, 1925, s. 77 (7) and s. 189. These charges cannot be registered under Land Charges Act, 1925, as land charges.

of which is retained by the Vendor) and to delivery of copies thereof and hereby undertakes for the safe custody of the same.

8. Certificate of value.

In witness, *etc.*

*The Schedule above referred to*

### Form 19

**Conveyance of Freehold Dwelling-house by Mortgagor and Mortgagee Subject to Two Overriding Rentcharges in Consideration of a Second Perpetual Rentcharge of £—— and a Sum of £——. Full Form** (*a*).

*Drafted by J. J. Somerville, Barrister-at-Law*

This Conveyance made the —— day of —— 19— between A of *etc.* (hereinafter called "the Vendor") of the first part B of *etc.* C of *etc.* and D of *etc.* (hereinafter called "the Mortgagees") of the second part and E of *etc.* (hereinafter called "the Purchaser") of the third part.

Whereas:

(a) At the date of the Mortgage hereinafter mentioned the Vendor was seised (excepting and reserving nevertheless as hereinafter mentioned) of the property hereby assured together with other properties

(b) The said property is together with other properties situate in —— subject to two several perpetual yearly rentcharges of £—— and £—— (hereinafter called "the Overriding Rents") created by two several Indentures respectively dated the —— day of —— 19— and the —— day of —— 19— (hereinafter together called "the Rent Indentures") and as to the Indenture dated the said —— day of —— 19— (hereinafter called "the Restrictive Indenture") made between F of *etc.* of the first part G of *etc.* of the second part and H of *etc.* of

(*a*) Stamp *ad valorem* on the amount of the money consideration together with twenty times the computed amount of the newly created rentcharge. The Overriding Rentcharges do not attract stamp duty. The Conveyance should be executed in duplicate.

the third part and as to the Indenture dated the said —— day of —— 19— made between J of *etc.* of the first part K of *etc.* of the second part and L of *etc.* of the third part and to the covenants and provisions contained in each of the Rent Indentures for securing payment of the rentcharge thereby limited in use

(c) By a Mortgage dated the —— day of —— 19— (hereinafter called "the Mortgage") made between the Vendor of the one part and M of *etc.* and N of *etc.* (hereinafter called "the Original Mortgagees") of the other part the said property (together with other properties) was demised to the Original Mortgagees by way of mortgage for securing payment to the Original Mortgagees of the sum of £—— with interest thereon as therein expressed

(d) By the Instruments specified in the First Schedule hereto the principal sum now owing on the security of the Mortgage with the interest thereon has become vested in the Mortgagees and there is now due on the security of the Mortgage the principal sum of £—— all interest thereon having been duly paid

(e) The Vendor has agreed with the Purchaser to sell and transfer the fee simple of the said property subject to the Overriding Rents but otherwise free from incumbrances in consideration of the sum of £—— and the perpetual yearly rentcharge of £—— hereby reserved and of the covenants on the part of the Purchaser hereinafter contained

(f) It has been agreed that the sum of £—— part of the said sum of £—— shall be paid to the Mortgagees in part discharge of the principal moneys and interest now owing on and secured by the Mortgage and that the Mortgagees shall join in this Deed in manner hereinafter appearing

(g) It has also been agreed that this Deed shall contain the provisions herein expressed.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of (a) the sum of £—— now paid by the Purchaser at the request of the Vendor in manner following namely the sum of £——

part thereof to the Mortgagees (the receipt whereof the Mortgagees hereby acknowledge) and the sum of £—— residue thereof to the Vendor (the receipt and payment in manner aforesaid of which respective sums making together the said sum of £ —— part of the purchase consideration the Vendor hereby acknowledges) and (b) the yearly rentcharge hereinafter reserved to the Vendor and of the covenants on the part of the Purchaser hereinafter contained the Vendor as beneficial owner hereby conveys and grants and the Mortgagees as mortgagees by direction of the Vendor and to the intent that the mortgage term shall merge in the freehold reversion of the property hereby assured hereby assign and surrender unto the Purchaser

ALL THAT messuage or dwelling-house situate and numbered —— TOGETHER with the land forming the site thereof and occupied therewith excepting and reserving as is excepted and reserved in the Restrictive Indenture

TO HOLD the same unto the Purchaser in fee simple discharged from all principal moneys and interest secured by the Mortgage subject to:—

(1) Payment of the Overriding Rents respectively limited by the Rent Indentures and to the performance and observance of the respective covenants and conditions in the Rent Indentures contained so far as the same are now subsisting and capable of taking effect; and

(2) Subject and reserving to the Vendor in fee simple a perpetual yearly rentcharge of £—— to commence from the date hereof and to be charged upon and issuing out of the property hereby assured without any deduction save for property or income tax by equal half yearly payments on the —— day of —— and the —— day of —— in each year the first of such payments to be made on the —— day of —— next

PROVIDED ALWAYS that this assurance shall not include or operate as a grant or assurance of any easement or quasi-easement heretofore held or enjoyed with the property hereby assured or any part thereof.

2. IT is hereby declared that the said property is held at the date hereof for use as a dwelling-house together with the right to use the same property for such other purposes as may now or hereafter be authorised with such use aforesaid under or by virtue of the Town and Country Planning Act 1947 or any Act for the time being amending or replacing the same.

3. IT is hereby agreed and declared that every wall or fence between the property hereby assured and any other property or properties of the Vendor shall be deemed to be a party fence or wall to be maintained and repaired at the joint expense of the respective owners for the time being of the properties thereby separated.

4. THE Purchaser hereby covenants with the Vendor in manner following that is to say:—

(1) The Purchaser will henceforth pay to the Vendor the said yearly rentcharge of £—— at the times and in the manner hereinbefore appointed for the payment thereof free from all deductions save as aforesaid;

(2) The Purchaser will at all times hereafter keep the said dwelling-house and the boundary walls drains and appurtenances thereof in good and tenantable repair order and condition and of a clear yearly letting value of £—— at the least and when necessary to rebuild the said dwelling-house or another in lieu thereof;

(3) The Purchaser will permit the Vendor on seven days' written notice to enter the said dwelling-house to view the state of repair and condition thereof and to give notice of wants of repair which the Purchaser shall comply with within two months after such notice and in case of default the Vendor shall be entitled to enter upon the said property and repair the same at the expense of the Purchaser and all expenses of such repair shall be repaid by the Purchaser on demand and may be recoverable by distress;

(4) The Purchaser will insure to the full value thereof and and on demand produce the policy and the receipt thereof to the Vendor for the current premium and shall

expend the money received under such insurance and such other moneys as may be necessary in rebuilding;

(5) The Purchaser shall not carry on or permit or suffer to be carried on in or upon the said property anything which may be considered a public or private nuisance or annoyance to the neighbourhood; and

(6) The Purchaser shall perform and observe the covenants and conditions contained in the Rent Indentures so far as the same relate to the said property and shall indemnify the Vendor from and against all actions charges claims costs damages demands expenses proceedings and suits in respect of non-performance and non-observance of such covenants and conditions.

5. If at any time within the joint lives of the Vendor and the Purchaser and their Survivor and twenty one years thereafter the Purchaser shall make default in performing any covenant hereinbefore contained for keeping the said dwelling-house in repair or for rebuilding or reinstating the same in case of destruction or damage by fire and shall not make good such default and perform such covenant within twelve months after having received from the Vendor notice in writing requiring the Purchaser to do so then and in any such case and as often as the same shall happen it shall be lawful for the Vendor to enter in and upon the said dwelling-house or any part thereof and to execute and do all such works and things as may be requisite specifically to perform the covenants hereinbefore contained and to hold and remain in possession of the said premises and take the rents and profits thereof until thereby or otherwise all costs charges and expenses properly incurred by the Vendor in or about the execution of any such works or things as aforesaid and of costs and expenses otherwise occasioned by the exercise of this power together with interest thereon at the rate of £4 per centum per annum shall be fully paid and satisfied (*b*).

(*b*) This power of re-entry if extended, otherwise than to breaches of covenant for non-payment of the rentcharge, must be framed to operate within the rule against perpetuities. It is additional to the statutory powers contained in ss. 121 and 162 of the Law of Property Act, 1925.

6. THE Vendor hereby covenants with the Purchaser that he the Vendor will henceforth duly pay the Overriding Rents as they become due and observe and perform the restrictions and covenants specified in the Rent Indentures which relate to the land therein comprised and not hereby assured and shall keep the Purchaser and the land hereby assured indemnified against the same and against all actions charges claims costs damages demands expenses proceedings and suits on account thereof

PROVIDED ALWAYS that if and whenever the Purchaser shall be under the necessity of paying and shall pay directly or indirectly any part of the Overriding Rents he may retain the Rentcharge hereby limited until thereby or otherwise the same shall be reimbursed with all expenses and in case of insufficiency may enter into and distrain upon such of the lands of the Vendor originally charged with the Overriding Rents as are not hereby assured and the buildings thereon and dispose according to law of any distress found to the intent that thereby or otherwise the amount so paid and all expenses occasioned by the default may be fully satisfied AND PROVIDED FURTHER that if and whenever the Vendor shall sell any part or parts of the properties originally charged with the Overriding Rents and not hereby conveyed and the buildings thereon and if the Vendor shall on such sale reserve a yearly rentcharge or rentcharges then and in any such case the Purchaser shall be entitled to collect such yearly rentcharge or rentcharges in lieu of the foregoing right of distraint conferred in respect of such properties so sold by the Vendor as aforesaid (*c*).

7. (1) THE Mortgagees as to their own respective acts and defaults only and not to those of each other and so as to bind themselves and their representatives respectively only while having the actual custody of the deeds and writings hereby covenanted to be produced and so far as practicable to bind such deeds and writings into whosesoever hands the same might come but not so as to incur any liability in relation thereto further

(*c*) See s. 162 (1) (c) of the Law of Property Act, 1925. The perpetuity rule does not apply to this proviso.

or otherwise do hereby for themselves respectively covenant with the Purchaser that they the Mortgagees or some or one of them their or some of their successors in title will at all times hereafter upon every reasonable request and at the cost of the Purchaser produce or cause to be produced the documents specified in the Second Schedule hereto and if required to deliver or cause to be delivered copies thereof

(2) The Vendor hereby covenants with the Purchaser that the Mortgagees will keep the said documents safe wholly and unobliterated (fire or other inevitable accident only excepted) Provided that this covenant shall become void if at any time hereafter the person then having possession of the said documents shall give to the Purchaser an undertaking for the safe custody thereof.

8. The expressions "Vendor" "Mortgagees" and "Purchaser" shall where the context so admits include his or their or each of their respective successors in title.

9. It is hereby declared and certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £——.

In witness *etc.*

The First Schedule *above referred to*

[*Description of document.*]

*Date.*

The Second Schedule *above referred to*

[*Description of document.*]

*Date.*

## Form 20

**Voluntary Settlement by a Father on his Eldest Child with provision for the Accumulation of Income for twenty-one years to provide portions for Younger Children. Intended to save Surtax and Estate Duty (*a*).**

(Short Form)

*Drafted by B. A. Bicknell, of Lincoln's Inn*

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Settlor") of the one part Parties.

(*a*) Stamp *ad valorem*. This settlement is intended to meet the case of a settlor who has substantial capital of which he wishes to divest himself with a view to saving surtax and estate duty should he live five years but who does not wish to give immediate and absolute interests to his adult children, feeling that there is no reason why they should inherit immediately what, apart from the desire of the settlor to save estate duty, they would not take until his death. It is impractical to direct accumulations for twenty-one years *simpliciter*, since should the testator die before the expiration of the period the accumulations would cease under s. 164 (1) of the Law of Property Act, 1925, and on his death estate duty would become payable even if he had lived more than five years from the date of the settlement: *Adamson* v. *Att.-Gen.*, [1933] A. C. 257. This settlement provides for accumulations for twenty-one years by use of the provisions of s. 164 (2). It is only appropriate to the case where a settlor has two or more children since it is based on the power under s. 164 (2) (ii) of the Law of Property Act, 1925, to accumulate income indefinitely (provided the perpetuity period is not exceeded) for the purpose of raising portions for any child, children or remoter issue of the settlor. For the trust for accumulations to be within the exception in s. 164 (2) it is essential that the sum raised as portions should be held on separate trusts for different persons to those taking the capital of the fund the income of which is accumulated. See *Re Bourne's Settlement Trusts*, 174 L. T. 281.

This settlement is based on the following assumptions: (1) That the settlor has sufficient assets at his disposal outside the settlement to enable him to make provision by his will for his wife and for any other persons for whom he wishes to provide. (2) That the settlor does not want the income accumulated for younger children to be available for their maintenance or benefit but has other resources available for that purpose. (3) That the settlor is prepared for the benefit of the settlement to be limited to younger children born within twenty-one years from its date, when the trust to accumulate income for portions will cease and the trust fund will vest in the adult children. In these days a trust for twenty-one years, with further trusts of the shares of children who at the expiration of that period are not of an age to take vested interests, is generally as long a trust as it is expedient to create. However, if the settlor wishes all after-born children to share in the portions fund, the trusts can be amended or the form of settlement in the *Conveyancer and Property Lawyer*, Vol. 13 (N.S.), p. 565, can be used with the necessary modifications.

and B of *etc.* and C of *etc.* (hereinafter called "the Original Trustees") of the other part.

Recitals:

WHEREAS:

transfer of investments,

(1) The Settlor being absolutely entitled to the moneys and investments specified in the schedule hereto and being desirous of settling the same in manner hereinafter appearing has paid or transferred or is about to pay or transfer the same to the Original Trustees

settlor's family;

(2) The Settlor has four children and no more namely D E F G who are all under the age of twenty-one years

desire to settle.

(3) The Settlor is desirous of making provision for his said children and any after-born children of his and their issue in manner hereinafter appearing.

Witnesseth.

NOW THIS DEED WITNESSETH that in consideration of his natural love and affection for his said children and for divers other good causes and considerations the Settlor declares and IT IS HEREBY AGREED AND DECLARED as follows:—

1. This Settlement is irrevocable.

Definitions.

2. In this Settlement the following expressions have the following meanings:—

(A) "The Trustees" means the Original Trustees or the survivor of them or other the trustee or trustees for the time being of this Settlement and (notwithstanding any context) a sole trustee may act for all the purposes of this Settlement

(B) "The trust fund" means and includes (1) the moneys and investments specified in the schedule hereto (2) all moneys and investments paid or transferred to and accepted by the Trustees as additions to the trust fund (3) the investments and property from time to time representing the same moneys investments and additions or any part or parts thereof respectively

(C) "The date of distribution" means the —— day of —— 19— (*b*)

(*b*) The date of distribution will be the expiration of twenty-one years from the date of the deed. This date can be postponed for a further period. It must fall, however, within the trust period as defined in clause 2 (D), which is the latest date permissible under the perpetuity rule.

(D) "The trust period" means the period which expires at the end of twenty-one years after the death of the last survivor of such of the following persons as have been born before and are living at the date of this Settlement namely the descendants of the Settlor's father and the descendants of His late Majesty King George the 5th

(E) "The Eldest Child" means the eldest child of the Settlor living at the date of distribution or who being then dead has left issue then living

(F) "The Younger Children" means any child of the Settlor born before the date of distribution other than the Eldest Child.

Direction to accumulate.

3. The Trustees shall accumulate the income of the Trust Fund accruing before the date of distribution or before the determination of the trust period whichever first happens at compound interest by investing the same and the resulting income thereof in any investments in which capital money is hereby or by statute authorised to be invested.

Trusts of portions fund.

4. From and after the date of distribution the Trustees shall stand possessed of the investments representing the accumulations directed by clause 3 hereof (hereinafter called "the portions fund") upon the following trusts that is to say:—

Power of appointment.

(i) In trust for all such one or more to the exclusion of the others or other of the Younger Children and their issue at such age or time or respective ages or times if more than one in such shares and with such trusts for their respective benefit and such provisions for their respective advancement maintenance and education at the discretion of the Trustees or of any other person or persons as the Settlor shall by any deed revocable or irrevocable appoint (*c*)

Trust for division into shares.

(ii) In default of and subject to any such appointment upon trust to divide the portions fund into as many equal shares as there shall be Younger Children who or some issue of whom shall be then living on the date of distribution and to appropriate

(*c*) The exercise of this special power would appear to be a "disposition" within s. 44 (1) of the Finance Act, 1940, as extended by s. 46 (1) of the Finance Act, 1950, and accordingly estate duty would be payable as in a gift for five years from the date of the exercise of the power.

one of such shares to each of such Younger Children who or some issue of whom shall be then living

Hotchpot clause.

PROVIDED ALWAYS that any share appointed to a child of the Settlor or to his or her issue under the foregoing power shall in the division of the unappointed part of the portions fund be brought into hotchpot by and as against the share of the portions fund appropriated to such child

Trusts for younger children.

(iii) The share of the portions fund which is hereinbefore directed to be appropriated to any of the Younger Children shall be held on the following trusts and with and subject to the following powers wherein such share and all additions thereto are referred to as the Settled Share and that one of the Younger Children to whom such share is appropriated is hereinafter referred to as "the Younger Child" that is to say:—

Power to apply income for maintenance.

(A) So long as the Younger Child is alive and under the age of twenty-one years the Trustees may at their discretion pay all or any part of the income (*d*) of the Settled Share to the Younger Child (notwithstanding infancy) for his or her own absolute use and benefit or pay or apply all or any part of the income for or towards the maintenance education or benefit of the Younger Child in such manner as the Trustees may think fit and shall accumulate the surplus (if any) of the income by appropriating the same to the Younger Child and investing the same in augmentation of the Settled Share but so long as the Younger Child is alive and under the age of twenty-one years the Trustees may at any time or times if they think fit apply such accumulations or any part thereof as if the same were income of the Settled Share arising in the then current year

Trusts until twenty-five.

Trusts of capital.

(B) Subject as hereinafter declared the Trustees shall hold the income of the settled share upon trust for the Younger Child until he or she dies or attains the age of twenty-five years or the trust period expires whichever shall first happen and subject thereto shall hold the settled share in trust for the Younger Child absolutely if he or she is alive at the expiration of the trust period or attains the age of twenty-five years before

(*d*) Any income paid to the child during infancy will be treated as the settlor's income for income tax purposes.

such expiration and subject as aforesaid upon trust for all or any the children or child of the Younger Child who shall be living at the expiration of the trust period or shall before such expiration attain the age of twenty-one years or marry and if more than one as tenants in common in equal shares absolutely

(C) Subject as hereinbefore declared the settled share and the income thereof shall be held on the same trusts as would have been applicable hereto if the Younger Child had died unmarried before the date of distribution

Ultimate trusts of portions fund.

(iv) Subject as hereinbefore declared the Trustees shall stand possessed of the portions fund upon the trusts hereinafter declared of the trust fund.

5. From and after the date of distribution the Trustees shall stand possessed of the capital and income of the trust fund upon the following trusts that is to say:

Trusts of trust fund.

(i) Upon trust for the Eldest Child living at the date of distribution who shall attain the age of twenty-one years or marry under that age absolutely

Trust for eldest child.

(ii) Subject as aforesaid upon trust for all or any the children or child of the Eldest Child who shall be living at the expiration of the trust period or who shall before such expiration attain the age of twenty-one years or marry and if more than one as tenants in common in equal shares

Trusts for children of eldest child.

(iii) Subject as hereinbefore declared the Trustees shall stand possessed of the trust fund upon trust for X absolutely.

6. The Trustees shall have the following powers namely:—

Powers of trustees:

(1) Power to allow the investments specified in the Schedule hereto and all investments transferred to and accepted by the Trustees as additions to the trust property as and when the same respectively shall be received in possession by the Trustees or any of them or any part or parts thereof respectively to remain in the actual state of investment thereof so long as the Trustees may think fit

to retain investments;

(2) Power at any time or times with the consent in writing of the Settlor during his lifetime and after his death at the discretion of the Trustees to sell call in or convert into money

to sell investments;

the aforesaid investments or any of them or any part thereof respectively

to invest; (3) Power with such consent or at such discretion as aforesaid to invest the moneys produced by such sale calling in or conversion or any other capital moneys which may be received by the Trustees in respect of the trust fund (when the same respectively shall have been received by the Trustees) in the names of the Trustees in any manner hereinafter mentioned that is to say:—

(i) In any of the public stocks or funds or government securities of the United Kingdom

(ii) In the purchase (whether for income occupation or other purposes) of land in England or Wales being either freehold or held for a term of which not less than fifty years shall be unexpired at the date of purchase all lands so purchased to be held by the Trustees upon trust to sell the same with such consent or at such discretion as aforesaid and with full power to postpone conversion

(iii) In or upon the stocks funds shares debentures mortgages or securities of any corporation body or company municipal county local commercial or of any other description incorporated or registered in the United Kingdom

(iv) Upon the security of any interest for a life or lives or determinable on a life or lives or any other event in real or personal immoveable or moveable property wheresoever situate or arising together with a policy or policies of assurance on such life or lives or against such event

(v) Upon loan to or deposit with any building society in England or Wales

to vary investments; (4) Power with such consent or at such discretion as aforesaid to vary or transpose any investments into or for any other or others of any nature hereinbefore authorised and to vary the terms of or property comprised in any security

to erect and repair buildings. (5) Power during the trust period with such consent or at such discretion as aforesaid to apply any money (not being income) in the erection alteration improvement or structural repair of any buildings on any land held on the same trusts as the moneys applied therein under this power and (in particular)

in the making of any works which though in the nature of improvements are not improvements authorised by the Settled Land Act 1925.

Discretionary powers limited to perpetuity period.

7. Every discretion (*e*) or power by this Settlement conferred on any person or on the Trustees and not expressly made exercisable only during a period allowed by law shall (notwithstanding anything to the contrary hereinbefore expressed or implied) only be exercisable during the trust period and during such further period if any (whether definite or indefinite) as in the case of the particular discretion or power in question the law may allow.

Power to appoint new trustees.

8. The power of appointing a new trustee or new trustees of these presents shall be vested in the Settlor during his life.

Trustee's remuneration.

9. Any trustee for the time being hereunder being a solicitor or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business done by him or his firm in the premises during the trust period whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of a solicitor or other professional person.

Payment of trust corporation.

10. Any corporation that is a trust corporation within the meaning of the Law of Property Act 1925 (as amended in 1926) and is appointed to be a trustee of this Settlement shall during the trust period have the powers rights and benefits as to remuneration or otherwise as at or prior to its appointment may be agreed in writing between such corporation and the person or persons making such appointment or (in default of such agreement) in accordance with the corporation's published terms and conditions as to acceptance of trusts current at the date of its appointment.

IN WITNESS *etc.*

THE SCHEDULE

[*Particulars of the moneys and investments settled by the above-written Deed.*]

(*e*) If the powers are not expressly limited to exercise during the perpetuity period, they may be held to be void as infringing the rule against perpetuities. *Re Allott*, [1924] 2 Ch. 498.

## Form 21

**Voluntary Settlement by a Father on his Adult, Infant and after-born Children intended to Save Income Tax and Estate Duty. Provisions for the Payment of Annuities to Adult Children, and Trusts for the Accumulation of the Balance of Income for twenty-one years to Provide Portions for Younger Children. Provisions for Maintenance and Advancement** (*a*).

*Drafted by B. A. Bicknell, of Lincoln's Inn*

Parties. THIS SETTLEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Settlor") of the one part and B of *etc.* and C of *etc.* (hereinafter called "the Original Trustees") of the other part.

Recitals: WHEREAS:

transfer of investments; (1) The Settlor being absolutely entitled to the moneys and investments specified in the schedule hereto and being desirous of settling the same in manner hereinafter appearing has paid or transferred or is about to pay or transfer the same to the Original Trustees

settlor's family; (2) The Settlor has four children and no more namely two sons D and E who have respectively attained the age of twenty-one years and F and G who are under the age of twenty-one years having been born on the —— day of —— 19— and the —— day of —— 19— respectively

desire to settle. (3) The Settlor is desirous of making provision for his said children and any after-born children of his and their issue in manner hereinafter appearing.

---

(*a*) Stamp *ad valorem*. This settlement is a longer version of the preceding form (*ante*, p. 567). It is based on the same principle as the preceding form of utilising the power to accumulate for portions authorised by s. 164 (2) (ii) of the Law of Property Act, 1925. In this case, the settlement is made on the assumption that the settlor has two families: adult children of a first marriage for whom he wishes to make some immediate provision but to whom he does not wish to make an immediate capital gift and infant children of a second marriage for whose benefit income is to be accumulated. This form of settlement, like the preceding form, should be used with some caution, since it ties up capital and income for twenty-one years and does not provide for any earlier determination of the trusts save to the extent that some capital payments may be made to elder children.

NOW THIS DEED WITNESSETH that in consideration of his natural love and affection for his said children and for divers other good causes and considerations the Settlor declares and IT IS HEREBY AGREED AND DECLARED as follows:— Witnesseth.

1. This Settlement is irrevocable.

2. In this Settlement the following expressions have the following meanings:— Definitions.

(A) "The Trustees" means the Original Trustees or the survivor of them or other the trustee or trustees for the time being of this Settlement and (notwithstanding any context) a sole trustee may act for all the purposes of this Settlement

(B) "The trust fund" means and includes (1) the moneys and investments specified in the schedule hereto (2) all moneys and investments paid or transferred to and accepted by the Trustees as additions to the trust fund (3) the investments and property from time to time representing the same moneys investments and additions or any part or parts thereof respectively

(C) "The date of distribution" means the —— day of —— 19—

(D) "The Younger Children" means the said F and G and any child of the Settlor born hereafter but before the date of distribution

(E) "The trust period" means the period which expires at the end of twenty-one years after the death of the last survivor of such of the following persons as have been born before and are living at the date of this Settlement namely the descendants of the Settlor's father and the descendants of His late Majesty King George the 5th.

3. The income of the trust fund accruing before the date of distribution shall be held as follows:— Income trusts: to pay annuities;

(i) Upon trust to raise out of such income two annuities of £—— each and the Trustees shall hold one of such annuities upon trust for the said D during his life and the Trustees shall hold the other of such annuities upon trust (*b*) for the said E

(*b*) This is a continuing annuity and on the death of D or E the estate duty will be payable out of the annuity under s. 1 of the Finance Act, 1894 and not on a slice of the trust fund. *Re The Duke of Norfolk*, [1950] Ch. 467.

during his life such respective annuities to commence from the date hereof and to cease on the date of distribution and to be payable by half yearly instalments on the —— day of —— and the —— day of —— in every year the first payments or a proportionate part thereof to be made on the —— day of —— next

(ii) If either of them the said D and the said E shall die before the date of distribution then and in each such case the Trustees shall stand possessed of the annuity which but for such death would be held on trust for the one so dying (subject to the payment of all death duties payable in respect thereof (*b*) upon trust until the date of distribution to pay or apply the same for the maintenance education or benefit of his issue from time to time living in such shares and proportions and in such manner as the Trustees shall in their absolute discretion think fit and in default of such issue upon the trusts in this and the preceding paragraph declared of the annuity provided for the other of them the said D and E and the issue of such other

to accumulate.

(iii) Subject as aforesaid the Trustees shall accumulate the balance of the said income at compound interest by investing the same and the resulting income thereof in any investments in which capital money is hereby or by statute authorised to be invested and the said investments representing such accumulations (hereinafter called "the portions fund") shall be held upon the trusts hereinafter declared.

Trusts of portions fund.

4. From and after the date of distribution the Trustees shall stand possessed of the capital and income of the portions fund upon the following trusts that is to say:—

Power of appointment.

(i) In trust for all such one or more to the exclusion of the others or other of the Younger Children and their issue at such age or time or respective ages or times if more than one in such shares and with such trusts for their respective benefit and such provisions for their respective advancement maintenance and education at the discretion of the Trustees or of any other person or persons as the Settlor shall by any deed revocable or irrevocable appoint

Trusts to divide fund.

(ii) In default of and subject to any such appointment upon trust to divide the portions fund into as many equal shares as

there shall be Younger Children who or some issue of whom shall be then living on the date of distribution and to appropriate one of such shares to each of such Younger Children who or some issue of whom shall be then living

Hotchpot clause.

PROVIDED ALWAYS that any share appointed to a child of the Settlor or to his or her issue under the foregoing power shall in the division of the unappointed part of the portions fund be brought into hotchpot by and as against the share of the portions fund appropriated to such child

Trusts for younger children.

(iii) The share of the portions fund which is hereinbefore directed to be appropriated to any of the Younger Children shall be held on the following trusts and with and subject to the following powers wherein such share and all additions thereto are referred to as the "Settled Share" and that one of the Younger Children to whom such share is appropriated is hereinafter referred to as "the Younger Child" that is to say:—

Powers of maintenance.

(A) So long as the Younger Child is alive and under the age of twenty-one years the Trustees may at their discretion pay all or any part of the income of the Settled Share to the Younger Child (notwithstanding infancy) for his or her own absolute use and benefit or pay or apply all or any part of the income for or towards the maintenance education or benefit of the Younger Child in such manner as the Trustees may think fit and shall accumulate the surplus (if any) of the income by appropriating the same to the Younger Child and investing the same in augmentation of the Settled Share but so long as the Younger Child is alive and under the age of twenty-one years the Trustees may at any time or times if they think fit apply such accumulations or any part thereof as if the same were income of the Settled Share arising in the then current year

Trusts of income.

(B) Subject as hereinafter declared the Trustees shall hold the income of the Settled Share upon trust for the Younger Child until he or she dies or attains the age of twenty-five years or the trust period expires whichever shall first happen and subject thereto shall hold the Settled Share in trust for the Younger Child absolutely if he or she is alive at the expiration of the trust period or attains the age of twenty-five years before such

expiration and subject as aforesaid upon trust for all or any the children or child of the Younger Child who shall be living at the expiration of the trust period or shall before such expiration attain the age of twenty-one years or marry and if more than one as tenants in common in equal shares absolutely

(C) Subject as hereinbefore declared the Settled Share and the income thereof shall be held on the same trusts as would have been applicable hereto if the Younger Child had died unmarried before the date of distribution

(iv) Subject as hereinbefore declared the Trustees shall stand possessed of the portions fund upon the trusts hereinafter declared of the trust fund.

Power to raise capital for elder children.

5. (i) Prior to the date of distribution the Trustees may at any time or times raise all or any part of so much of the capital of the trust fund as is required by its income to pay the said annuity payable for the benefit of the said D and pay the same to the said D for his own absolute use and benefit or may raise pay or apply the same for the advancement or otherwise for the benefit of the said D as the Trustees shall think fit and any capital so raised paid or applied shall be treated as producing income at the rate of £4 per cent. per annum which income shall be brought into account by the said D and his said annuity reduced accordingly

(ii) The Trustees shall have the like powers mutatis mutandis to raise pay or apply to or for the benefit of the said E so much of the capital of the trust fund as is required by its income to produce the said annuity payable for the benefit of the said E as are conferred by paragraph (i) of this subclause for the benefit of the said D as if the name of the said E were substituted for that of the said D.

Trusts of capital of trust fund.

6. On the date of distribution the Trustees shall stand possessed of the trust fund and of the income thereof upon trust for such of them the said D and E as shall be then living if more than one as tenants in common in equal shares absolutely

PROVIDED ALWAYS as follows:

Hotchpot clause.

(A) On such division all capital sums raised or applied for the benefit of either of them the said D and E under the

foregoing power shall be brought into hotchpot by the person taking such benefit or his or her issue claiming by substitution under the provision hereinafter contained.

Substitutional trusts for issue.

(B) Provided also if any person (being either D or E) shall have died before the date of distribution leaving issue who shall be living at or born in due time after the date of distribution and shall be living at the expiration of the trust period or shall before such expiration being male attain the age of twenty-one years or being female attain that age or marry then and in each case such issue shall take by substitution and if more than one in equal shares the share in the trust fund which such deceased person would have taken under the trust in that behalf hereinbefore declared had he or she been alive on the date of distribution but so that no issue remoter than a child of such deceased person shall take except in the case of the death of his her or their parent before the date of distribution and in the place of such parent

Ultimate trusts.

7. Subject as aforesaid the Trustees shall stand possessed of the trust fund and the income thereof upon the trusts hereinbefore declared of the portions fund.

Ultimate trust.

8. Subject as hereinafter declared the Trustees shall stand possessed of the trust fund and the portions fund and the income thereof upon trust for X his own absolute use and benefit.

Powers of trustees.

[*Here insert clauses 6, 7, 8, 9 and 10 from Form 20.*]

IN WITNESS, *etc.*

THE SCHEDULE

[*Particulars of the moneys and investments settled by the above-written Deed.*]

## Form 22

### Deed of Gift by a Son to his Mother of his Interest under the Intestacy of his Father

Parties.

THIS DEED OF GIFT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Son") of the one part and B of *etc.* (hereinafter called "the Widow") of the other part.

Recitals:

WHEREAS:—

intestacy of father;

(1) X late of *etc.* (hereinafter called "the Intestate") died on the —— day of —— 19— intestate and on the —— day of —— 19— Letters of Administration to his estate were granted out of the —— Probate Registry to the Widow and the Son

next-of-kin;

(2) The Intestate left him surviving one child only *viz.* the Son and with the Widow the only person entitled to participate in his estate

residuary estate;

(3) The funeral testamentary and administration expenses debts and other liabilities of the Intestate including the duties payable on his death have been paid and discharged and his residuary estate within the meaning of the Administration of Estates Act 1925 now consists of the freehold property investments and cash mentioned in the Schedule hereto

no payment of £1,000 to widow;

(4) The sum of £1,000 with interest thereon from the death of the Intestate to which the Widow is entitled under the said Act has not been paid

desire to make gift.

(5) The Son is desirous of conveying and assigning to the Widow all his estate and interest in the residuary estate of the Intestate.

NOW THIS DEED WITNESSETH as follows:—

Assignment of interest in residuary estate.

1. In consideration of his natural love and affection for the Widow the Son hereby conveys and assigns unto the Widow ALL THAT his estate and interest (subject to the Widow's charge for £1,000 and interest thereon as from the death of the Intestate at the rate of £5 per cent. per annum and as to one moiety expectant on her death) in the said freehold property and investments mentioned in the said Schedule hereto and the

proceeds of sale and conversion thereof and all other (if any) the residuary estate of the Intestate

TO HOLD unto the Widow absolutely (*a*) to the intent that her aforesaid life interest shall merge and be extinguished in her equitable interest in remainder.

Covenant to pay duties.

2. The Widow hereby covenants with the Son his executors and administrators that if any duty shall become payable in respect of the residuary estate of the Intestate or any part thereof by reason of the death of the Son within five years of the date hereof then she the Widow her executors and administrators will immediately thereupon pay and discharge the same and will at all times keep the Son his executors and administrators effectually indemnified against the same and every part thereof and all actions proceedings costs charges claims and demands whatsoever in respect thereof (*b*).

Declaration as to value.

3. It is hereby declared and certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the property conveyed or transferred exceeds [£500] [£1,500].

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

[*This will contain particulars of the freehold property and investments and cash*]

---

(*a*) If the debts and duties have not been paid this should be recited and the assignment will be of all the son's interest in "the estate", not the "residuary estate", of the intestate subject to these liabilities, which will be taken into consideration in assessing the value of the interest assigned for stamp duty. The stamp should anyhow be adjudicated.

(*b*) This covenant is not strictly necessary. Section 43 of the Finance Act, 1940, does not, it is considered, apply to an assignment by the remainderman to the tenant for life, and even if it did, duty would be payable on the widow's death as on a surrender of her life interest, not as on a gift by the son of his reversionary interest; and estate duty having been already paid on the father's death, the property would be exempt. No funds need therefore be retained by the administrators to answer the duty, and the whole property can be transferred at once to the widow.

## Form 23

**Conveyance by two Trustees entitled to Proceeds of Sale in Equal Shares of part of a Property to one Trustee, the other Trustee having secured his Share in the Proceeds of Sale out of the Purchase Money of the part sold, which was Conveyed subject to and with the benefit of Restrictions affecting the part Sold and the part Retained (*a*).**

Parties.

*This Form was drafted by Donald C. L. Cree, of Lincoln's Inn*

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A B of *etc.* and C D of *etc.* (hereinafter called "the Trustees") of the one part and the said A B of the other part.

Recitals:

WHEREAS:

of conveyance to trustees on trust for sale and proceeds to them equally;

(1) By a conveyance (hereinafter called the Blackacre conveyance) dated the —— day of —— 19— and made between X Y of *etc.* of the one part and the trustees of the other part the property known as Blackacre more particularly described in the said conveyance and shown on the plan thereto and hereto enclosed with a red verge line was in consideration of the sum of £X conveyed to the trustees subject to and with the benefit of the covenants therein mentioned for an estate in fee simple upon trust for sale and to stand possessed of the net proceeds of sale after payment of costs and the net rents and profits until sale after payment of all outgoings in trust for the trustees as tenants in common in equal shares

of provision of purchase money in equal shares;

(2) The said purchase money of £X was provided by the trustees out of their own moneys in equal shares

of conversion of house into two houses;

(3) The trustees in the year 1950 converted Blackacre into two semi-detached houses and agreed that for the purpose of partition one of such houses to be called Whiteacre together with the land adjoining thereto should be sold and after making provision for the cost of converting Blackacre into two semi-detached residences the proceeds of such sale should belong to

(*a*) Stamp 10s. which must be adjudicated. It will usually be found more convenient to keep the equities off the title and for the trustee whose share has been satisfied to retire and to appoint a nominee of the holding trustee in place of the retiring trustee but where it is desired to put an end to the trust for sale this form may be useful.

the said C D as his share of the proceeds of sale of Blackacre and that the said A B should retain the semi-detached dwelling-house known as Blackacre and land adjacent thereto for his own use and benefit and as his share

of sale of one of the houses;

(4) By a conveyance (hereinafter called the Whiteacre conveyance) dated the —— day of —— 19— and made between the trustees of the one part and Y Z of the other part in consideration of the sum of £—— all that piece of land together with the semi-detached house erected thereon or on some part thereof known as Whiteacre aforesaid more particularly shown on the plan thereto edged red was conveyed to the said Y Z for an estate in fee simple together with the rights described in the first part of the first schedule thereto and subject to the exceptions reservations and conditions therein mentioned or referred to.

of payment of purchase money less cost of conversion to one of the trustees;

(5) The trustees duly paid the sum of £—— to the said C D representing the said C D's share in equity in Blackacre or the proceeds of sale thereof as he the said C D doth hereby acknowledge.

of request for conveyance of the remaining house to the other trustee.

(6) The said A B has requested the trustees to convey the premises remaining undisposed of and now known as Blackacre and the land adjacent and belonging thereto to the said A B free from the said trust for sale which they have agreed to do.

Now in consideration of such agreement and of the premises THIS DEED WITNESSETH as follows:

Conveyance.

1. The trustees as trustees hereby grant and convey unto the said A B all those pieces or parcels of land situate at —— and more particularly delineated on the plan hereto and enclosed with a red verge line Together with the semi-detached messuage or dwelling-house and out buildings erected thereon and the gardener's cottage also erected thereon and known as Blackacre aforesaid TO HOLD UNTO the said A B in fee simple discharged from the said trust for sale Together with the benefit of the covenants conditions restrictions and obligations mentioned in the Whiteacre conveyance imposed on the property thereby assured for the benefit of the property hereby assured but subject to the covenants and conditions mentioned or referred

to in the schedule to the Blackacre conveyance and subject also to the rights covenants conditions restrictions and obligations specified in the Whiteacre conveyance and imposed on the property hereby assured for the benefit of the adjoining property known as Whiteacre.

Covenant for indemnity.

2. The said A B hereby covenants with the said C D with the object of affording the said C D a full and sufficient indemnity but not further or otherwise that he the said A B will at all times hereafter duly perform and observe the covenants and restrictive provisions contained in the deeds mentioned in the schedule to the Blackacre conveyance and also contained in the Whiteacre conveyance in relation to the premises hereby assured and will at all times keep the said C D and his representatives effectually indemnified against all actions proceedings costs charges claims and demands whatsoever in respect thereof.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first written.

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